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# CITATIONS

NOVEMBER - TWO THOUSAND EIGHT

2008 BEN E. NORDMAN  
PUBLIC SERVICES AWARD WINNER  
KATHLEEN JOHNSTON BACK

PAGE 6



MATTHEW P. GUASCO

PANDA KROLL

SCOTT TAYLOR, ESQ.

ROBERT E. KING, ESQ.

M. CARMEN RAMÍREZ

STEVE HENDERSON

<b>PRESIDENT'S MESSAGE</b>	<b>3</b>
<b>AN EXTRAORDINARY ALTERNATIVE TO LAW SCHOOL</b>	<b>10</b>
<b>MUNICIPAL LAW REPORT: REGULATION OF HOME BUSINESSES</b>	<b>12</b>
<b>LETTER TO THE EDITOR</b>	<b>14</b>
<b>THE ADVANTAGES OF HIRING YOUR NANNY LEGALLY</b>	<b>20</b>
<b>THE LEGACY OF RICHARD A. WEINSTOCK</b>	<b>22</b>
<b>CLASSIFIEDS</b>	<b>29</b>
<b>EXEC'S DOT... DOT... DOT...</b>	<b>30</b>

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# PRESIDENT'S MESSAGE

By *Matthew P. Guasco*



Is it November already? It must be, because I have seen Christmas decorations at various stores for the last several weeks, the Santa Ana winds have begun their yearly havoc on my garden, and baseball season, alas, is no more. I am also nearing the end of my term as your President. It has been a wonderful year. Before it ends, I have an enjoyable duty to perform: promoting and presiding over VCBA's Annual Dinner on November 15, 2008, at 6:00 p.m. at the Crowne Plaza Hotel in Ventura.

At the dinner, we will present the Ben E. Nordman Public Service Award to Kathleen Johnston Back. Ms. Back's long-standing service to her community, especially to families and children, exemplify the qualities typical of past Nordman Award recipients. In addition to honoring Ms. Back, we will recognize the achievements of the following individuals who have given their time so generously to the VCBA Volunteer Legal Services Program: Josef Marc Dion, Janie Hall Beach, Sandra Canaday Knapp, and Kimberly Kay Shean. Each will receive the James D. Loebel, VCBA/VLSP, Inc. Pro Bono Award. In addition to being a fun evening of socializing, dining and dancing, the Annual Dinner honors these people and their service to the Ventura County community.

At this year's dinner, there will be excellent music, a chance to catch up with friends and colleagues, a silent auction with many great items, a nice dinner, and dancing. Putting on the Annual Dinner is no small accomplishment, and our profound thanks and appreciation go to the following members of the Annual Dinner Committee who have worked tirelessly

to make this event special: Cheri Kurman (Chair), Don Hurley (Auction), Tony Strauss (Sponsorships), Eric Reed, and Christian Arrieta. Additionally, this event would not be possible without the hard work of our Executive Director, Steve Henderson, and his capable staff: Alice Duran, Alejandra Varela, and Celeno Valenzuela. There are more volunteers too numerous to mention, but we thank you for helping to make the Annual Dinner happen.

Apart from being a fun evening, the Annual Dinner also serves an important purpose: Net proceeds from the event help the VCBA to continue and expand the Volunteer Legal Services Program. The ticket price covers the cost of the event and, depending on attendance, usually leaves a little left over which is used to run the VLSP. In recent years, we have relied on the auction and event sponsorships to increase the funds which go to VLSP. It is not too late to be an event sponsor or to donate an auction item. You probably have already received a sponsorship invitation. Become a sponsor. Donate a weekend getaway or day spa package, or fine wines, or fine art, or sports tickets, or a condominium stay. Sponsorships and auction donations are the most cost-effective means of raising funds for VLSP. Bid generously on

auction items at the Annual Dinner. Your investment in VLSP helps us to provide legal assistance to the growing number of people in our community who cannot afford to pay for it themselves.

If you want to be a sponsor, let Tony Strauss know. If you want to donate an auction item, contact Don Hurley. When you get your invitation, please send the RSVP back right away so we can do as much advance planning as possible. Mark your calendars now, and look forward to a great evening with your colleagues from throughout Ventura County.

Coming together, having fun, supporting a good cause, honoring the community work of our colleagues. The Annual Dinner is the place to be on November 15, 2008. I hope to see you there.

*Matthew P. Guasco is the President of the Ventura County Bar Association, and he is Of Counsel to the law firm of Arnold, Bleuel, La Rochelle, Mathews & Zirbel, LLP, in Oxnard, where he handles appellate litigation as well as trial court litigation in business, real estate and probate matters. He is also a mediator and arbitrator.*

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## 2008 BEN E. NORDMAN PUBLIC SERVICES AWARD WINNER KATHLEEN JOHNSTON BACK

*The more you give, the more capacity to give you discover in yourself – and in your family and your friends.* That's a lesson 2008 Ben E. Nordman Public Services Award winner Kathleen Johnston Back teaches. A Ventura native and a lawyer in a family of lawyers and judges (Kathy is married to Superior Court **Judge Brian Back**; their daughter Shannon is an Orange County Deputy District Attorney; Kathy's sister, Wendy Lindley, is an Orange County Superior Court judge and her brother Jerry Johnston is also an Orange County Superior Court judge), Kathy might have chosen a life of careless comfort. But because of her willingness to reach out to those who lack that choice, the community is all the richer – and Kathy would be the first to agree that she is none the poorer.

The Nordman Award is presented annually to a local lawyer who has made extraordinary contributions to community wellbeing. It is particularly fitting for Kathy to receive the award, given that Ben Nordman himself was Kathy's mentor during her early years of law practice at Nordman, Cormany, Hair & Compton. Among the many things Kathy learned was that Ben Nordman never turned away a client who could not afford to pay. Instead, she says, "he always found a way to help."

So does Kathy. A wide selection of community leaders who joined in Kathy's nomination for the Nordman Award cited her leadership at her children's schools, her constructive role in multiple nonprofit organizations, and most of all for her devotion to direct assistance to individuals and families who, Kathy says, "just crossed my path. They needed something, and no one was providing it." That epitomizes Kathy's approach to public service – find a need and don't wait for an organization to fill it.

Several years ago, the Back family (Kathy, Brian, and their five children) took in a teen after his mother died and his father moved to Asia. They helped him finish high school, attend college and find a job. Then Kathy heard of another family acquaintance who faced the prospect of juvenile hall. She



says she "knew he was a good kid who just needed to learn how to make good decisions for himself."

At the time, Court of Appeal **Justice Steven Perren** presided over Juvenile Court. Kathy had known Steve Perren since her first legal job, a summer clerkship at Benton, Orr, Duval & Buckingham, where he practiced alongside **Jim Sherren**, the late **Jim McGahan**, future **Judge David Long**, and other legal notables. Kathy and Brian were able to persuade Judge Perren to order that the boy live with the Backs instead of being locked up. Kathy made the boy part of their family circle, helping him learn to focus and to develop a sense of self-esteem by involving him in one of her pet projects, reading to first grade classes (before law school, Kathy was a primary school teacher). Kathy and Brian have since acted as hands-on parents to several other troubled teens, some for weeks or months, some for a year or two.

Informal foster parenthood is far from Kathy's only contribution to children and families. Teaching a church class for her daughter and friends, Kathy wanted to organize a holiday project. She asked a shelter to help her identify a needy family. When asked to pick one family from a list of five families who would otherwise have a bleak Christmas Kathy could not choose so committed to all five families including 17 children. The church class worked together to provide

decorations, a Christmas dinner, and specifically needed and/or wished for gifts. But more help was needed so Kathy's children and friends stepped in (daughter Laurel got her whole 9th grade class involved) and "The Christmas Project" began. It is now in its 11th year and for many of those involved in the giving it has become an integral part of their own families' holiday celebrations. Many have found that the joy of granting a wish to someone who really needs it is the best part of the holiday.

A few years ago, the Ventura County Human Services Agency put Kathy in touch with a family of six who were homeless and living on the edge. The family included an injured father, an overwhelmed mother, and four children struggling in school. When she realized how deep this family's needs went beyond holiday cheer, Kathy vowed to adopt them for a year. She solicited family and friends to contribute money for groceries, school supplies, clothes, and even rent which took them from homelessness to a roof over their heads. Kathy tutored the children and recruited her daughters and friends to tutor. She worked with a public health nurse to get appropriate medical care. Two years later, through Kathy's hands-on attention and the network of volunteer tutors and other support people she helped the family to build, the children are performing admirably, the mother is able to advocate for them in her own right, and the father has halted his slide into unemployment.

Other families have likewise benefited from Kathy's community service. Last year during the holidays, Kathy organized a massive drive to relieve an Oxnard grandmother who had assumed the care of ten grandchildren. The team helped the grandmother retain housing, clothe the children and make sure each child received one wished-for gift. Over the course of the year Kathy has assisted the grandmother to manage a health care crisis, tapped her own family and friends for money so one of the older grandchildren could go to the prom, connected the family with a Public Health Nurse, intervened with Human Services to access the maximum support available, with Behavioral Health to support a special needs

child, and with Child Protective Services to keep the family together, and assisted in connecting the family with the Boys and Girls Club of Oxnard and attempted to put together tutoring.

***Kathy's approach to public service – find a need and don't wait for an organization to fill it.***

Kathy attended Santa Clara University Law School for two years, and then transferred to UCLA to finish her third year when Brian took a job in Ventura County (their first child was born in the middle of first semester finals). Though she was first in her law school class, Kathy claims she was so shy that she never once raised her hand during law school. She is no longer shy, at least when it comes to advocacy on behalf of “her” families, though. Besides taking on difficult landlords and balky bureaucracies on behalf of people who did not know how to insist on help, Kathy not long ago found herself sitting in a first grade class with a child who had been held back because the boy's mother was afraid of the first grade teacher, who insisted the boy was not capable of learning. Kathy, a former teacher herself, knew better. She says she “just wasn't going to leave until the teacher changed her attitude.”

In addition to her work with the homeless and hungry, Kathy has run a summer camp for needy children, also through Project Understanding. She has organized a mock trial program for private high school students that drew rave reviews – and she recruited a troop of lawyers and judges to coach and staff it. She spent many years supporting her children and their teammates in AYSO soccer. Guests at Kathy's house may find themselves assembling birthday bags (containing cake mix, candles, presents, and party favors) that can be used to throw an instant birthday party for a child whose family could not afford one, or putting together nourishing breakfast bags distributed to hungry Venturans by Project Understanding.

After Kathy's years at Nordman, Cormany (where she worked with future Judges **Kent Kellegrew, Glen Reiser, Tari Cody, and Dave Worley**), in 1989, she left NCHC to join her husband and **Gary Arnold** at the

new firm of Arnold & Back (predecessor of today's “A to Z” firm), where Kathy focused on estate planning working extensively with **Jim Wojkowski**. Brian was appointed to the bench in 1997, and eventually family obliga-

tions caused Kathy to “retire” temporarily. In 2004, Kathy became county coordinator for Judicial Detention Alternative Initiative, a pathmaking program funded by the Annie E. Casey Foundation. JDAI works to establish detention alternatives for at-risk children

through collaboration between law enforcement, probation, the courts, the district attorney and public defender, behavioral health, human services, public health, education, and community-based organizations.

Kathy's passion for helping those who don't know how to speak up for themselves is contagious. She views the Nordman Award not so much as an honor for her past good works, but as a platform to spread the word about how much need there is in our county, and how much each of us can change the world by changing lives one family at a time. Her personal approach to social change reflects Ben Nordman's spirit.

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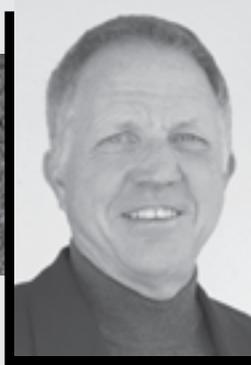
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# An Extraordinary Alternative to Law School

By Panda Kroll



*Cesar Chavez and Barbara Macri-Ortiz's daughter Gina.*

The walls of Ventura County attorney Barbara Macri-Ortiz's Oxnard home office are covered with dozens of awards for her pro bono work. The one conspicuous absence is a JD diploma: Macri-Ortiz received her training on the job, rather than in a law school. Macri-Ortiz's apprenticeship is codified as the "law office" study program.

The possibility of practical, as opposed to theoretical, training flies in the face of what most of us know. The highs and lows of our legal careers are mirrored by the highs and lows of our law school years. For many of us, the lows included intimidation at the hands of brilliant professors, as popularly depicted in the 1970's film, the "Paper Chase." Moreover, accreditation standards for California's many small law schools – heightened by the rise of Internet correspondence courses – have been the subject of public debate. In contrast, the "law office" or "judge's chambers" alternative to law school attendance is relatively unknown.

The educational component for attorney admissions is found in Business and Professions Code section 6060, subdivision (e) and the State Bar's Rules Regulating Admission to Practice Law in California. The Business and Professions Code provides that, after completing at least two years of college or successful completion of a college

level equivalency program, applicants need not attend law school, but are eligible for admission if they "stud[y] law diligently and in good faith for at least four years ... [i]n a law office in this state and under the personal supervision of a member of the State Bar of California who is, and for at least the last five years continuously has been, engaged in the active practice of law." Study is similarly permitted in the chambers and under the personal supervision "of a judge of a court of record of this state." Apprentices must pass the "baby bar" exam after completion of a first year of law study, and like their law school counterparts, must pass the State Bar Exam. Rule VII of the State Bar Rules additionally spells out rigorous requirements for both apprentices and their supervisors, including study "during regular business hours at least 18 hours each week," and an examination schedule. Supervisors are limited to two apprentices, must personally supervise apprentices for at least five hours each week, and must complete detailed reports every six months.

There are fewer than 100 California attorneys who have received their training through such an apprenticeship. If each of these attorneys has a unique story, not many can top that of Macri-Ortiz, who, after two years of study at UC Santa Cruz, worked directly under César Chavez at the United Farm Workers as a labor activist. Macri-Ortiz had already worked for the UFW for over a decade and was supervising the UFW's Legal Department when Chavez decided to formalize the UFW's legal apprenticeship program, and assigned UFW staff attorneys as supervisors. The program exemplifies one of Chavez' well-known tenets: "Ordinary people can do extraordinary things." As a condition of participation, Macri-Ortiz and her fellow apprentices committed to serve the Union as attorneys for two years after receiving their bar cards. All six apprentices who completed the UFW program passed the bar on their first attempts. Macri-Ortiz reports that the study of law was an extension of her prior UFW collective bargaining experience, and prepared her well for the civil rights-related work she does today.

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An apprenticeship program, however, may not be suitable for all would-be attorneys. Macri-Ortiz cautions that apprentices need to bring certain skills to the table. She suggests that discipline, the ability to write, and an affinity for hard work may be prerequisites for success in the program. Similarly, attorneys or judges who wish to supervise apprentices need to be prepared for the training and reporting tasks. Finances can be complex, as well. Macri-Ortiz reports that she recently completed training of her first apprentice, Jessica Arciniega, a UFW colleague. Arciniega passed the baby bar and is currently waiting for her July bar exam results. Because so much of Macri-Ortiz's practice is pro bono, she could not offer full time employment sufficient to sustain Arciniega financially during the four year program. However, Arciniega was a recipient of three annual Mexican American Bar Association scholarships that helped with her expenses, and she landed a part-time position that complemented her study at Macri-Ortiz's office. On the positive side, once admitted to the bar, the former apprentice will already possess practical skills rivaling her peers, most of whom graduate from law school never having prepared a witness for trial or written a brief. Macri-Ortiz encourages local firms, especially those able to offer work/study income, to take on apprentices. For both apprentices and supervisors, she promises that the experience will be extraordinary.

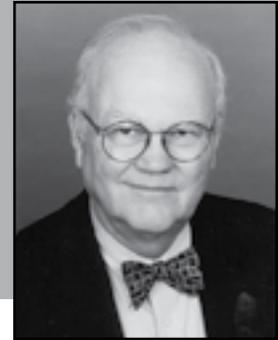
*Panda Kroll is an associate at the Law Offices of David M. Karen and a member of the CITATIONS editorial board. She is studying for her brown belt in karate.*

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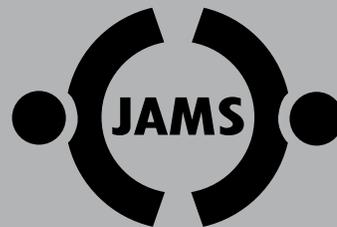
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# Municipal Law Report: Regulation of Home Businesses

By Scott Taylor, Esq.

Solo attorneys who register their home address as a “business” address may be surprised to learn that, like other home-based business owners, they are required to obtain a “Home Occupation Permit” from their city of residence. This local permit is in addition to the requirement of most municipalities that owners obtain one or more business tax certificates (licenses) before conducting any business, trade, profession, enterprise, establishment or occupation. While a business tax certificate must be regularly renewed, and may be required from each city where work is performed, a home occupation permit may only be required on a one-time basis, upon an inspection certifying that the use does not diminish the usable parking space in the owner’s garage or violate specific zoning regulations or restrictions.

Permit application provisions vary among municipalities. Most Ventura County cities require a home occupation permit. All cities also prohibit outside storage and advertising signage as conditions of the permit. The cities, however, vary when it comes to allowing employees and customers at the residence. For example, the City of Camarillo prohibits any employment in the home other than resident family members, and prohibits customers on the premises except for certain expressly defined instructional or tutorial uses. Other cities, such as Thousand Oaks and Ventura, permit non-family employees. Some cities limit the number of customers allowed. For example, the County of Ventura limits the number of customers at the residence to no more than six per day and only between the hours of 8:00 am and 5:00 pm. The permit variances are driven by each municipality’s unique needs. For example, Bob Burrow, Camarillo’s Director of Community Development, notes that in cities with many resident writers, a one-employee provision is common, in recognition that such writers may require a script assistant.

Local zoning laws are intended to preserve the character of a neighborhood that is zoned residential, to limit nuisances arising from commercial uses, and to ensure public safety. According to a 2004 study commissioned by

the Office of Advocacy, U.S. Small Business Administration, there has been “a broad movement” in the past decade to adopt provisions reducing the regulatory burdens on home businesses. This is due in part to the recognition that home-based businesses make up roughly half of all United States businesses, and are a strong economic force in their respective communities. In Camarillo, for example, there are approximately 6,100 home-based businesses operating under Home Occupation Permits.

Generally *permitted* home-based businesses include attorneys, accountants, appraisers, e-bay re-sellers, construction or landscape contractors, tutors, software developers, consultants, writers, and agents. Generally *prohibited* home-based businesses include adult entertainment businesses, repair shops (although some municipalities allow small-appliance repair), animal-related businesses, food-related businesses, or any other uses that are deemed incompatible with residential activities. For obvious reasons, uses that require storage of toxic or highly combustible materials are not permitted. Because of the variety of business applicants, most cities apply local provisions to determine permitted and prohibited uses on a case-by-case basis, rather than providing specific examples of such uses.

Generally, home business owners are not permitted to advertise their home addresses on business cards or elsewhere, although publication of a phone number is acceptable. Further, all municipalities in Ventura County prohibit any type of signage at the residence advertising a business.

Municipalities generally have neither the resources nor the inclination to enforce home occupation permits unless a neighbor calls to complain. A letter from the city may be the first time an owner realizes a permit is required. The County of Ventura issues home occupation permits but does not conduct on-site inspections. The County requires a permit only to verify that the proposed use is commensurate with the specific land use zone.

Once a municipal agency (i.e., code enforcement) receives notification of an alleged unauthorized use, a letter is typically sent to the business owner indicating that a home occupation permit and tax certificate/business license is required to lawfully operate the business from their home. All agencies, except for the County, conduct residential property inspections to insure that the business use does not impact the neighbors or the dynamics of the neighborhood. For example, a contractor who wishes to turn his residential property into an industrial storage yard would be prohibited from such use. Similarly, a home-based attorney who wishes to utilize his garage as a records and case file storage unit may be prohibited from that use if it diminishes the usable parking area.

CITATIONS editorial board member and solo practitioner Karen Darnall earns a modest income as a freelance violinist. Many years before moving into her current Camarillo office, Darnall found about home business regulation in an unusual manner. She and four other musicians had formed a group, “Fiori Musicali,” and advertised in the Yellow Pages. A competing musician complained to City Hall that Darnall, the general partner, had failed to obtain a business license in Camarillo. When Darnall responded to the City’s inquiry, she acknowledged that her garage was too cluttered to pass a “home occupation” inspection. A City official helped her finesse the situation by allowing her to purchase a business license without undergoing inspection. In contrast, home-based business owners who disregard a notice of violation may face penalties ranging from the issuance of an administrative citation, resulting in a monetary fine to being named in a criminal or civil complaint – admittedly a rare result.

There is an important legal advantage to being properly licensed and permitted. A home-based business owner who brings a contract action may need to prove proper licensing to overcome a defense of illegality. Thus, it is in business owners’ advantage to comply with local zoning rules, especially based on the small investment in time and

money required for such compliance. For example, the City of Camarillo only requires a one-time \$95 application fee.

For more information on local regulations related to home businesses, contact your local city code compliance office.

*Scott Taylor, is an attorney working as code compliance manager for the City of Camarillo.*

## Website Businesses Raise Novel Challenges to Zoning Laws

By Panda Kroll

**Can your neighbor obtain a license to operate a “porn-dorm”?** This issue is being litigated in *Flava Works, Inc. v. City of Miami, Fla.*, No. 07-22370-CIV (S.D. Fla. 2008). CocoDorm.com is a subscription-based gay porn website that operates out of a home in residential Miami, Florida. The window blinds were left open once too often, and neighbors complained to City Hall. A Miami Code Enforcement Board ruled that CocoDorm’s website constituted an “adult entertainment establishment” operating in violation of Miami’s zoning code. The owners of CocoDorm are seeking federal court review, alleging that Miami’s interest in regulating the secondary effects of adult entertainment establishments had no connection to an Internet-based website business, because the business was conducted over the Internet in “virtual space.” CocoDorm additionally raised First and Fourteenth Amendment challenges to Miami’s municipal zoning codes. The district court has rejected the City’s claim that CocoDorm lacked standing to bring its challenge because it had never applied for the requisite permit. A trial is set for December.

*Panda Kroll practices in Camarillo, teaches at CSUCI, and is a member of CITATIONS’ editorial board.*

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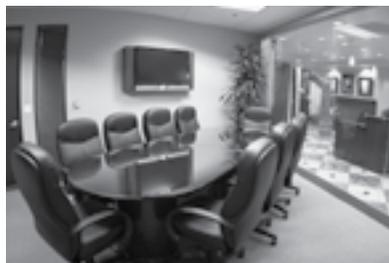
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## LETTERS TO THE EDITOR

Re: Terrence Bonham's Ab Initio Article

Dear Editor:

With all due respect to my colleagues Mark Hancock and Lou Vigorita, since when did the law profession become a popularity contest? The Rules of Professional Conduct mandate that I be a zealous advocate, and if, under the circumstances, that requires aggressive or even boorish behavior towards a witness or opposing party, then I am compelled to do so, irrespective of whether I hurt someone's feelings, violate the cultural tyranny of political correctness or create a negative self-image. Terrence Bonham's purpose in sharing his old war story was to emphasize that attorneys can and should maintain professional and collegiate relationships while at the same time zealously, even vehemently, representing their client. Clients come and go – but opposing counsel will remain in the adversarial arena, so it is ultimately to the benefit of your clients to maintain cordial and professional relationships. But this cordiality should not leak into the battlefield. Lawyers must recognize and embrace the historical genesis and reality that our profession is based on combat. The precursors to our adversarial system were trials by combat; with retained champions, essentially hired mercenaries.

I have yet to meet a client seeking a nice, polite, sensitive attorney. They want a shark, a bulldog, a piranha, a pit bull. Never have I heard a client express pride and confidence that their attorney was a poodle, guppy or goldfish. We are warriors and are expected to behave and think as such. The fact that we can have a mutual respect and professional courtesy between warriors does not, and should not, diminish the fact that our clients expect us to act as warriors on their behalf. We are not in a conciliatory system; the adversary system has not been, nor should it be, supplanted by a collaborative model. Wishful thinking won't change human nature. Our profession is fundamentally based on human character flaws. The courtroom should not be a new-age therapy session where we get in touch with our inner selves, with the Judge acting as some sort of spiritual guru. I come from a

long line of Scottish gallowglasses, who have served in 400 years of British confrontations around the world. The courtroom should be a snickersnee, not a therapy couch for lawyers with low self-esteem.

Very truly yours,

MICHAEL L. McQUEEN

Dear Editor:

It is a pleasure to practice in a legal community with a rich history and – still – a certain level of collegiality like ours. I have enjoyed seeing these things reported in the "Ab Initio" pieces in this publication. With a cold drink in hand on a recent afternoon on my porch, I really enjoyed relaxing with Terry Bonham's installment. I actually laughed out loud – the old fashioned way. Thanks, and please keep the installments coming.

GREG HERRING

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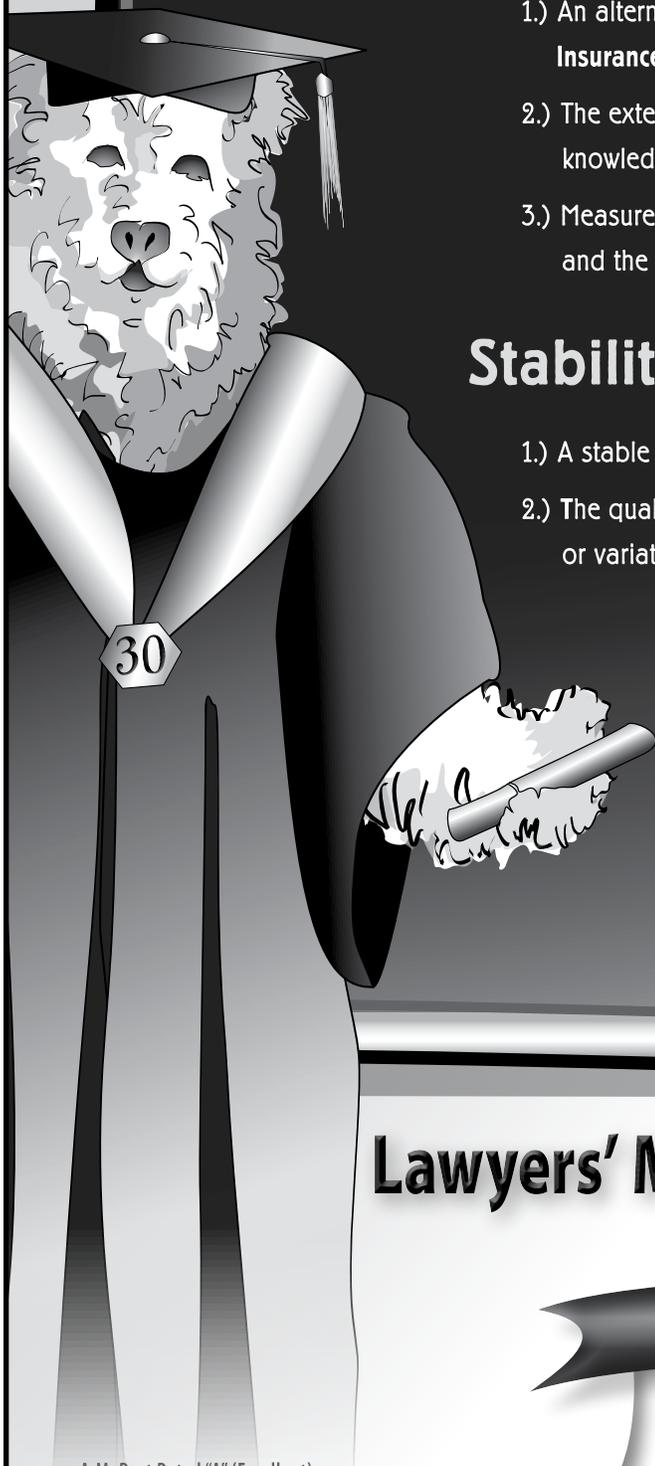
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## Stability — sta'·bil'·i·ty, noun

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# The Advantages of Hiring Your Nanny Legally ... and the Consequences of Paying “Under the Table”

By Robert E. King, Esq.

You're a busy attorney trying to juggle work and family. To help care for your children, you hire a nanny. Because you think you'll never get caught, you've heard that it costs so much more to hire legally and hey, let's face it, you weren't planning on being Attorney General any time soon, you think it's safe to hire someone under the table. Think again.

The decision to hire someone “under the table” – although it may seem easier and cheaper – ultimately is penny-wise and pound-foolish. If (and most likely, when) you get caught, you will have committed federal tax fraud and endangered your ability to practice law. Even if you don't get caught, you'll be missing out on legal and tax advantages that would have applied if you were paying legally. In short, don't do it.

Admittedly, hiring a nanny legally can be daunting. There are many legal, tax and insurance questions that can make employing a nanny, elder care provider or any household worker seem like an onerous task. On closer examination, however, hiring a nanny or other household employee can be a straightforward process that benefits both the employer and employee.

## Nannies as Employees

You may be thinking that all of this sounds overly complicated. Couldn't you just call your nanny an independent contractor and make life a lot easier? In most cases, the answer is no.

The question of whether a nanny is an employee or an independent contractor is one that can sometimes have gray areas, but in almost all cases under both federal and California law, nannies are employees.

There are several criteria used to determine a nanny's employment status:

**Economic reality test** – Is this the nanny's only job? Even if it's not, does she rely on this specific job for a considerable amount of her income? Is her financial livelihood entirely or largely dependent on this job? If the answer is yes to any of these questions, then she's almost certainly an employee.

**Amount of control** – Another factor for whether a person is an employee centers on the issue of control. If you exercise control over how the person does his or her job in your own home – and in almost every case you would exercise such control over how your nanny interacts with your child – then you likely have an employee, not an independent contractor.

**Regular and substantial hours** – The more regularly a nanny works for a family – both in terms of schedule and frequency – the stronger the case that she is an employee. It is when her hours are minimal and/or fluctuate (i.e. some weeks she may work a few hours, while during other weeks she may not work at all based on her own schedule) that she could be considered an independent contractor.

The important thing to remember is that it's the law that determines who is and who is not an employee. How the nanny refers to herself, how the family defines her status in an employment contract, or whether she is paid hourly or is salaried do not on their own determine her employee status.

Although there can be limited exceptions to the employee definition for certain family members or if you take your child to another person's home for care, the general rule is that if you provide a substantial portion or all of her income and control how she performs her duties in your home, she is your employee and you are required to pay employment taxes for her work. These tests also can apply to other household employees such as elder care providers and personal chefs.

## Getting Caught

There are many ways – such as your nanny filing for unemployment, social security or workers compensation benefits – that even an amicable parting between you and your nanny could result in you facing an investigation for unpaid taxes. And these are just the unintentional examples. They don't include your disgruntled nanny, upset over some perceived slight, who quits and turns you in herself – or worse yet, tries to blackmail you. Or the neighbor or co-worker or family member who is envious or has always had a grudge against you and reports you. Or perhaps the IRS decides to audit you and notices the same amount of money flowing

out of your bank account every two weeks and gets suspicious.

Under any of these scenarios, the result is the same: You get caught and face considerable consequences.

## The Consequences

Because you must report household employment taxes on your personal federal tax return, failure to pay the appropriate taxes constitutes federal tax fraud. At a minimum the consequences include payment of all back taxes, penalties and interest and can include federal charges of perjury and tax evasion; fines of up to \$250,000; imprisonment for up to five years; and a criminal record for the rest of your life. There is no statute of limitations for failure to report and pay federal employment taxes.

The professional consequences are equally severe. For example, Business & Professions Code §6068(o)(4) requires that if you're charged with a felony such as tax fraud, you must report the charge to the state bar, potentially jeopardizing your ability to practice and earn a living. Additionally, if you're even considering becoming a judge or holding elected or appointed office, having a “Nannygate” story break about you, just as it did with Zoe Baird, Kimba Wood, or Linda Chavez, can ruin your reputation and career.

Regardless of your interest in higher office, as an attorney, you trade on your reputation for integrity, and being labeled a “tax cheat” isn't good for anyone's business.

## Advantages of Hiring Legally

Happily, there are a number of advantages to hiring a nanny legally. For example, you may be able to save taxes by putting up to \$5,000 pre-tax per family per year into a Dependent Care Account (“DCA”) to help pay for your nanny. Alternatively, you may be eligible to claim the federal Child and Dependent Care Tax Credit for a minimum tax credit of 20% for the first \$3,000 in qualifying expenses for each of your first two children per year. Most importantly, you get to spend more time with your family and sleep well at night knowing that you've done everything legally. Don't underestimate how worrying about

*Continued on page 21*



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## The Advantages of Hiring Your Nanny Legally ... and the Consequences of Paying “Under the Table”

*Continued from page 18*

getting caught and the consequences of hiring illegally can take a toll on you personally and professionally.

### Your Bottom Line

Perhaps the most common fallacy about employing a nanny legally is that it will greatly increase your expenses. A review of the additional costs, especially in light of the significant potential tax savings, reveals this contention to be inaccurate.

Social security, medicare, and state and federal unemployment taxes add approximately 9% of a nanny's salary to the typical household employer's costs. However, by maximizing your tax advantages, the true “burden” of hiring a nanny can be substantially less, as little as 4% of your costs.

An example best illustrates the true cost. The approximate 9% tax burden on a nanny's \$20,000 annual salary likely would cost her employer roughly \$1,800. However, the employer could shelter \$5,000 pre-tax in a DCA and use this money toward paying his or her nanny. Assuming the employer's effective tax rate is 20%, the employer's tax savings

from the DCA would be \$1,000. Subtracting this \$1,000 savings from the roughly \$1,800 paid in taxes yields an effective “cost” of approximately \$800, or roughly 4% of the nanny's annual salary.

Thus in this typical example, the bottom line cost of hiring someone legally is approximately 4% more, a small price to pay for the peace of mind that comes along with hiring your nanny legally. Remember, paying employment taxes isn't an option, it's the law.

*Robert E. King, Esq. is the Founder of Legally Nanny®, a law firm representing household employers and domestic employment and homecare agencies. Legally Nanny assists clients in hiring, employing, and paying nannies, elder care providers, and other household employees legally. King specializes in household employment law and has served as an expert witness in household employment matters such as calculating childcare costs. For more information, you may contact the firm at (714)336-8864 or at info@legallynanny.com.*

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### Sidebar: Worker's Compensation Insurance

There is bad news and good news when it comes to worker's compensation for your household employee. The bad news is that you as the employer are required to provide worker's compensation insurance for your household employee. The good news, however, is that under California law, all homeowner's insurance policies are required to offer worker's compensation coverage for household employees. This is by far the easiest and least expensive way for a household employer to obtain insurance for an employee working in the home. But here again, this coverage may only apply if you're employing someone legally, as most insurance policies exclude coverage for illegal activities including – you guessed it – employing someone “under the table.”

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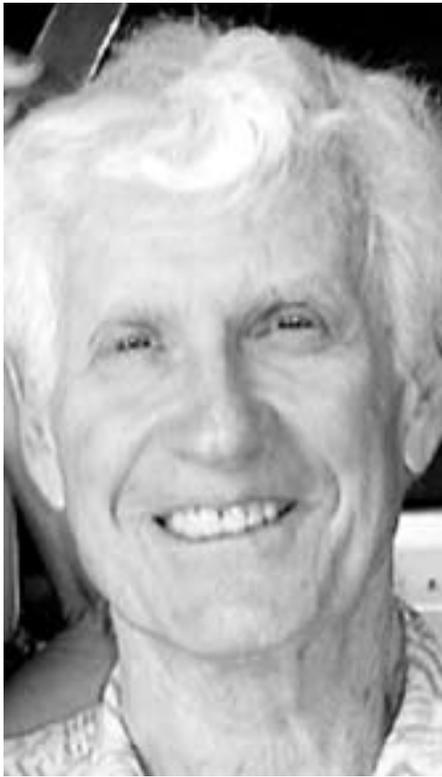
Mr. Guasco was admitted to the California Bar in 1985 (J.D., Golden Gate University School of Law; B.A., University of California, Davis). For over 20 years Mr. Guasco has focused his practice on appeals, writs, and related trial court proceedings. Mr. Guasco is also a trained and experienced arbitrator and mediator, an Adjunct Professor at Pepperdine University School of Law, a frequent speaker, lecturer and author, the current President of the Ventura County Bar Association and the past President of the Boys and Girls Club of Ventura.

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## The Legacy of Richard A. Weinstock, A Lawyer for Social Justice

By M. Carmen Ramírez



A friend and mentor to many of us, Attorney Richard A. Weinstock left us last September 28, 2008, when he died at his home after a long and brave battle with cancer.

In 1972, Dick became the director of the Legal Aid Association of Ventura County, (later known as Channel Counties Legal Services Association). By 1978, he had already established a record of successfully litigating precedent-setting cases for the most vulnerable and unpopular members of our community, challenging the establishment, including corporate interests, growers, the government – as well as the organized bar itself.

Dick was born in Los Angeles to Hungarian immigrant parents. He grew up in the San Fernando Valley, attended UCLA, graduating *magna cum laude*, and earned his juris doctor from Boalt Hall School of Law in 1964. Not content to be limited to a law degree, Dick went on to earn doctorate in Confluent Education at UC Santa Barbara in early 80s, following his directorship at the legal aid program. Returning to law, he became a Santa Monica city attorney, defending the newly adopted rent control law in that city. After a time he opened

a law office in Ventura, which he only recently closed. During his entire career, Dick focused on defending the interests of the disenfranchised: farm workers, students, mobile home owners, pensioners, victims of civil rights violations and employment discrimination, including pursuing First Amendment cases for his clients.

He practiced law for more than 40 years, but he never let his law practice be an obstacle to thoroughly enjoying life. He loved to travel, and during one of his early trips to Europe, he met his wife Carol, a Canadian. They celebrated their 40th anniversary not quite three weeks before his passing. Dick always took time to “smell the roses,” enjoying traveling, music, sports, reading, and good friends. Dick and Carol hiked the Inca Trail in Peru to Machu Picchu, went to the Himalayas, visited Vietnam, crossed the Sahara and rafted the Colorado River. He was famous for encouraging his friends and co-workers to take the time to travel, see the world, and escape the intensity of lawyering for a while. His musical interests included singing in the choir at Temple Beth Torah in Ventura, and playing the trumpet and singing with the Geritones, a volunteer band that entertained at senior citizen homes.

Following the closing of his practice a short time ago, Dick and Carol moved to Vancouver, British Columbia, where they planned to spend half the year, fulfilling a longtime wish to live in both the U.S. and Canada. They maintained their home and their friendships here in Ventura

County. Their son Tiven and his wife, Brandy, accomplished musicians, now live in Boston.

Dick was a very popular teacher at Ventura College of Law. He also founded the non-profit law organization, Advocates for Civil Justice, during a time when important civil rights matters could not be pursued by the legal services programs. He also was a co-founder of Citizens for Peaceful Resolutions, which promotes peace and social justice in Ventura County.

Many of Dick's colleagues, interviewed for this article, named his passion for social justice, his even-tempered and generous nature. The author of this article had the good fortune of sitting second chair with him in a lengthy jury trial involving employee rights. She can attest that it was a great pleasure to learn from him even when the going got tough.

Richard Weinstock will be deeply missed by his family, friends, and colleagues. Donations in his name can be made to the Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012 ([www.ccrjustice.org](http://www.ccrjustice.org)) or Inspire Health, Integrated Cancer Care, 200-1330 W. Eighth Ave., Vancouver, BC V6H4A6 Canada, ([www.inspirehealth.ca](http://www.inspirehealth.ca)).

*Carmen Ramírez is Director of Community Planning at Central Coast Alliance United for a Sustainable Economy.*

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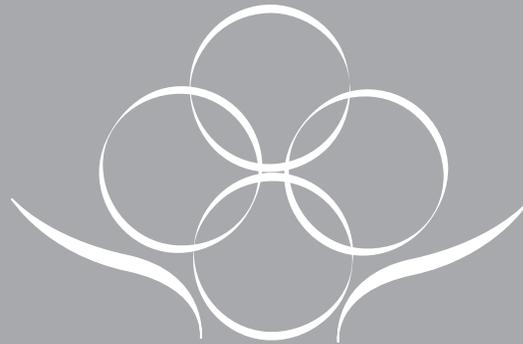
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Susana Goytia-Miller, Esq.  
 300 Explanade Dr., Suite 1750  
 Oxnard, CA 93006  
 Tel. (805) 488-2700  
 Fax: (805) 488-2751  
[Sgmillerlaw@aol.com](mailto:Sgmillerlaw@aol.com)  
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Lots of familiar faces at the annual meeting of the State Bar in Monterey held Septemb , **Carmen Ramirez, Ron Janes, Tony Strauss, Matt Guasco, Kim Shean, and Marc Dion.** Carmen ended her three-year term on the board of governors. Kim and Marc collected their hardware from **Chief Justice George** acknowledging pro bono efforts...From Henry Thoreau: "The law will never make men free, it is men that have to make the law free."...**Dorothy Prairie**, office administrator at **Hathaway Perrett Webster** et al., completed the two-day Avon Walk for Breast Cancer with her daughter and grand-daughter – BTW, Dorothy is 82 years young! There were 2200 participants and the walk raised \$5 million for breast cancer in Southern California. 26.3 miles on day one and 13.1 on the second day. Congrats to her at [dprairie@hathawaylawfirm.com](mailto:dprairie@hathawaylawfirm.com)...

China? Dien Le at [dien.le@calawcounsel.com](mailto:dien.le@calawcounsel.com)...From Gracie Allen: "Education is worth a whole lot. Just think – with enough education and brains the average man would make a good lawyer – and so would the average lawyer."...From MSNBC.com: "An attorney has been suspended for more than a year for accepting nude dances from a stripper as partial payment for the legal fees she owed him. The Illinois Attorney Registration and Disciplinary Commission said Scott Erwin will begin serving a 15-month suspension for misconduct

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

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

starting in November. Erwin, who practices in the northern Illinois city of DeKalb, and his client mutually agreed that she'd perform nude dances for him in his office as a way to reduce her legal fees, the commission's report said. He credited her for \$534 toward his bill for services of various legal matters, the report said. While she agreed to perform the dances, the client contended he touched her inappropriately during those dances, and she went to the police in 2002 with sexual assault allegations. Erwin denied any inappropriate touching happened and he was never charged criminally. The woman no longer works as a stripper either."...**David Richard** is a new father – baby Hazel was born 9.23 at 10:00 p.m. and weighed 6 pounds, 7 ounces. Hazel was also 20 inches long...Mother Shannon doing just fine...

**Gordon Lindeen** had a thoughtful Letter to the Editor in the November issue of the *California Bar Journal*. Wasn't too pleased with the "Lawyers' Eco Pledge"...From Bill Maher: "The Supreme Court ruled that it's unconstitutional to execute the mentally retarded. You can still elect them, though."... Get yourself to the bar's Annual Installation and Awards Banquet set for November 15 at the Crowne Plaza in Ventura. **Kathleen Johnston Back** has been selected to receive the Ben E. Nordman Public Service Award while **Marc Dion, Janie Beach, Sandra Knapp,** and **Kim Shean** accept the **James D. Loeb** VLSP, Inc. Pro Bono Public Service Awards. Dinner chairperson **Cheri Kurman** and her stellar committee consisting of **Eric Reed, Cristian Arrieta, Tony Strauss, Don Hurley, Matt Guasco** and **Mitch Disney**, promise a festive event with no lengthy speeches. The silent auction portion of the affair is the primary fund-raiser for the bar's pro bono program. Lost your invitation? Call Celene at 650.7599 or go to [www.vcba.org](http://www.vcba.org)...From Beccaria: "The majority of all laws are nothing but privileges, that is, a tribute paid by all to the convenience of some few."...

HOOPS!!! The Barristers hosted the 1<sup>st</sup> Annual "Everlasting Glory" Basketball Tournament raising a few hundred bucks for Food Share. The Three-On-Three Tourney drew nine teams and lawyers from all over our legal landscape. It was held at Balboa Middle School and the DA Team, Capital Punishment, won. DA's **Rameen Minoui, Derek Malan, Kevin Drescher** and **Stephen Slyer** comprised the winning gang (bad pun I'm sure). Rumor has it **Judge Vince O'Neill** held his own very well with the youth movement. **Mike Strauss** gets a ton of the credit, but Barristers officers made sure matters were organized...In the NY Times Best Sellers dated 9.21, 4 of the top 13 books were about the presidential or vp candidates...

**Leslie McAdam** is a momma otra vez! Fiona Grace was born 10.7 at 8:16 p.m. weighing-in at 6 pounds, 6 ounces, and 19 inches long. Big brother Joseph and daddy Tom are both exuberant...The Ventura County Legal Professionals Association held their annual Boss of the Year and Secretary of the Year gala treating 100 folks to a fun event with Master of Ceremonies, **Judge David Long**, leading the charge. Boss of the Year was once again **David Prayer**, nominated by Tamika Schmidt. **Bart Bleuel** won in 2007. Secretary of the Year was Rennee Hernandez, nominated by **Meghan Clark**. Thanks to **Judge Patricia Murphy** and **Michael Planet** for their efforts in the selection process...

*Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He will be volunteering Chicago style at a local polling place November 4. Additionally, Henderson laid some serious cash on the Rays and placed all of it in Wall Street. He will be celebrating 18 years on the job November 15. Card, letters and money welcomed.*

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