

NON-SEQUITUR

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President's Message

By Sally K. Chenault



My involvement in the Stanislaus County Bar Association ("SCBA") has shaped my career in ways I never anticipated and has led to opportunities I never imagined when I requested to be considered as a board member so many years ago. On May 8, 2015 prior to the SCBA Law Day luncheon, I was texting and emailing the California Supreme Court Associate Justice Goodwin Liu. Justice Liu was the keynote speaker for the 2015 Law Day Luncheon. We met prior to the luncheon and in addition to discussing the question and answer format for the luncheon, we talked about our children, our parents, the amount of water it takes to grow one almond and the paths that led us to become an attorney. An appellate attorney friend of mine who argues in front of the California Supreme Court asked me to recount those precious minutes with Justice Liu over and over again like a child who meets his/her super hero.

On October 16, 2014, as SCBA vice president and chairperson of the 2014 Bench/Bar Dinner ("BBD") I spent an afternoon with Carlotta Walls LaNier, one of the historic Little Rock Nine, prior to her presentation for the BBD. Ms. LaNier was a last minute replacement for Melba Pattillo Beals, also one of the Little Rock Nine, who became ill shortly before our BBD. Ms. LaNier and Ms. Beals were two of the nine black students who integrated Central High School in Little Rock, Arkansas in 1958, following the seminal U.S. Supreme Court case of *Brown v. Board of Education*. The opportunity to spend hours with Ms. LaNier was a gift of a lifetime and but for my involvement with the SCBA, it was an opportunity that I would never have had.

Mindful of the many demands on lawyers, I believe that it is critical that each and every member's experience with the SCBA be professionally and personally rewarding. To date in 2015, the SCBA has brought the legal community ten (10) MCLE classes on subject matter that is current and relevant. We hosted the New Judges' Lunch welcoming Justice Alan Cassidy and Justice Ruben Villalobos on April 10, 2015, the May 8, 2015 Law Day Luncheon, and the annual golf tournament on May 30, 2015. The SCBA assisted with the new Lawyers' Reception on April 2, 2015, generously hosted by Modesto Commerce Bank. We look forward to hosting the 2015 Bench-Bar Dinner (BBD) in October. Our Committee is still hard at work putting together details of this annual event and we will distribute event flyers once everything is finalized. Keep your eyes open!

The California State Bar recently closed public comment for the proposed increase in MCLE hours from 25 to 36 with a requirement that 12 of the hours be relevant to a member's practice area. The SCBA's relatively low cost of \$40 (with bag lunch) for one MCLE hour for members (versus \$60 for non-members) is a member benefit to consider. The SCBA is always looking for relevant MCLE presentations. Please offer your expertise or submit ideas to the SCBA.

The Lawyer Referral Service ("LRS") is an opportunity to give back to the community and also to gain new clients. The SCBA website under "Find a Lawyer" explains the necessary qualifications to be an LRS attorney. Call the SCBA office to sign up as an LRS attorney.

Membership in the SCBA is a commitment to our legal community. Volunteering, taking a leadership role and giving back are all ways we can ensure that the SCBA is here for generations to come and that we leave this place better than we found it.

So if you are a member and haven't been involved in what is going on, what are you waiting for? I hereby cordially invite you to get involved in the Stanislaus County Bar Association and use your talents for the betterment of yourself and your legal community. We need you. We need your passion. We need your excitement. We need your enthusiasm. The SCBA is dedicated to the success of our members.

Thank you for your continued support. The SCBA exists because of you.



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SCBA Calendar of Events

** You may also register & pay online for all Bar Association events, at STANBAR.ORG **

OCTOBER

? **Bench-Bar Dinner:** Once the details are finalized, an event flyer will be distributed.

NOVEMBER

13 **Judicial Calendar Luncheon:** The SOS Club in Modesto, from Noon to 1:00 p.m., with reviews of all 2016 Court Updates & News for 1 hour of MCLE credit available.

DECEMBER

11 **Holiday Luncheon:** The SOS Club in Modesto, from Noon to 1:00 p.m., with 2016 Installation of SCBA Officer and Board of Directors, Christmas Carols sung by a local school choir, charity donations and a lunch buffet.

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Effective on January 1,
2015

http://www.courts.ca.gov/documents/2015-01-01_Rules_doc.pdf

This is a link to short summaries of rule amendments recently adopted but the Judicial Council. Please refer to the history legend of each rule for its effective date.

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JOB OPENINGS

FULL TIME RECEPTIONIST NEEDED. If interested, please contact Kay Robles at the Law Office of Lawrence Beaver (209) 524-5145.

LEGAL ASSISTANT/PARALEGAL Full time position in small office. Duties: Answer phones/reception, draft docs, write letters, open files, manage/organize files & office, dictation, track/manage legal docs, email, calendaring. Skills: Basic Computer skills (word processing/ spreadsheets). Prior legal experience and paralegal certification, not required but a plus. Pay negotiable BOE. Send resume to: browe@rowelawoffices.com or Fax: (209) 529-4485. "Legal Asst/ Paralegal Position" in subject line.

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INVITATION TO PARTICIPATE

The *Stanislaus County Law Library* provides free access to legal information for the judiciary, members of the State Bar, public officials and to all residents of the County.

The Board of Trustees is interested in increasing participation from members of the legal community.

Law Library Board of Trustees meetings are generally held on the first Wednesday of each month at noon. Please join us in making the Library a great resource for our community.

For more information, call Jan at the Law Library at 209-558-7759. A no-host lunch is available if you call in advance.

SCBA SCHOLARSHIP FUND

The SCBA continues to accept contributions for the 2016 Scholarship Fund. Our goal for 2016 is to provide two \$1,000 Scholarship Awards to Stanislaus County High School seniors at the Law Day Lunch in May 2016.

Please send contributions to:
SCBA, 804 14th St, Modesto, CA 95354

UCC LIEN PRIORITIES ALTERED WHEN CREDITOR BREACHES FIDUCIARY DUTIES TO ANOTHER CREDITOR?

By Reno Fernandez

Does one creditor of a company owe fiduciary duties to another competing creditor? Surprisingly, the opinion in *Feresi v. The Livery, LLC*, 182 Cal.Rptr.3d 169 (2 Dist. 2014), suggests that the answer may be "yes!"

In *Feresi*, the husband granted the wife a lien against his 12.5% interest in a limited liability company to secure certain obligations related to their divorce, but the lien was not perfected by filing a UCC-1 Financing Statement. The wife promptly notified the company's manager of her lien. Thereafter, the manager made a loan to the husband and took a security interest in the same 12.5% interest. Upon default, the former wife attempted to foreclose her lien. When the manager learned of the foreclosure attempt, he filed a UCC-1 Financing Statement.

The wife's foreclosure was successful. The husband later defaulted on his indebtedness to the manager. The manager attempted to foreclose against the portion of the company now owned by the wife, arguing that the wife's lien was unperfected.

The court acknowledged that the manager's lien was senior to earlier unperfected liens but held that equity compels subordination. Specifically, the court found that the manager owed fiduciary duties to the company's members, including the wife, and perfecting his lien breach his fiduciary duties. The court's ruling was upheld on appeal notwithstanding the fact that both the wife and the manager were acting as creditors of the husband. This result cuts against the predictable order of priorities under the Uniform Commercial Code, and it is sure to cause commercial lawyers heartburn.

Reno is a partner with Macdonald Fernandez LLP, where he practices business bankruptcy law.

Law Firm Fraud: Is Your Firm at Risk?

By Steve Luna

Each year, law firms around the country are collectively scammed out of millions of dollars. Will you be one of them?

From California to Florida and every state in between, the news headlines are strikingly similar: "Local law firm falls victim to cashier's check scam." And while it may sound like something you read in the paper ten years ago, it could just as easily have been this morning's story. This con has stood the test of time for one simple reason: Lawyers continue to fall for it.

The Set Up

Here's what typically happens: An attorney receives what appears to be a legitimate solicitation email from a potential client, who claims he is owed a large sum of money and would like to retain the attorney's services to recover it. Often he will say that he was referred to the attorney by a familiar party. He and the attorney reach an agreement regarding service terms and fees.

Shortly thereafter, the client purports that his debtor has been intimidated into paying up, and the attorney receives a seemingly valid cashier's check from a reputable bank for the large sum in question. The client authorizes the attorney to withdraw his fee and requests that the remainder is wired to his account, typically overseas. The attorney complies, only to realize too late that the check was fraudulent and the firm has handed over its money to a vanishing crook.

One recent example involved a high-profile firm based in Orlando. After being duped by an individual claiming he was owed money in a wrongful termination suit with his former employer, Kaufman, Englett and Lynd, PLLC lost the \$285,000 they wired to a Japanese bank account.¹ Unfortunately, a quick Google search reveals dozens more stories just like this.

The Variations

The cashier's check scenario is just one example of how criminals prey upon law firms: Phishing emails and malicious software are also prevalent. Earlier this year, North Carolina firm Wallace & Pittman lost \$336,000 with the click of a mouse when a link within a valid-looking email about a recent ACH transaction enabled hackers to install keystroke tracking software on an employee's computer. This revealed the firm's banking passwords and allowed the thieves to wire funds to a Russian bank account. To make matters worse, the firm is now involved in a lawsuit with their bank over who is responsible to carry the loss.² The Federal Bureau of Investigation (FBI) also reports a rise in cyber-attacks targeting sensitive client data, including everything from patent applications to company merger details.³ The same modern technology that makes it easier to conduct everyday business—shared servers, virtual document storage, thumb drives, etc.—has also made it easier for hackers to access any and every piece of information they desire once they break into your network.

The Temptation

It's easy to read about scams on paper and wonder how anyone could be so foolish as to fall for them. But in the heat of the moment, when you are faced with the reality of a sagging economy and the pressure of obtaining new clients, it's even easier to let your guard down. In the quest for more billable hours, a sizeable retainer fee on a freshly minted cashier's check may seem like a great opportunity.

Furthermore, increasingly sophisticated tactics make it difficult to discern between legitimate and fraudulent documents. Particularly vulnerable are small firms and sole practitioners, who may lack the training and resources necessary to protect the large volume of sensitive data they store.

The Defense

Perhaps the most troubling aspect of this growing trend is that once you realize you have fallen victim to fraud, it's almost always too late to do anything about it. Cyber criminals are rarely caught, and banks are rarely held responsible for fraudulent transfers. Therefore, the key to protecting yourself is prevention. The following tips will help you learn to recognize suspicious activity and protect sensitive information so you can stop fraud before it happens.

Continued on next page....

- **Promote awareness**—Ensure that everyone in your office—from attorneys to administration to accounting—is aware of the threat of fraud. When handling cashier's checks, remind your staff to be on the lookout for signs of forgery and to contact the check's issuing financial institution for verification. Do not use the telephone number on the check, as it may be phony. Obtain the issuer's contact information from another source.
- **Know your client**—These days, it's very possible to have a legitimate attorney-client relationship where you have only met with a client by email or phone. Consider it a warning flag, however, and be extra vigilant about confirming all information provided by such a client. This includes contact information, business relationships and any third parties mentioned—especially references.
- **Don't jump the gun**—Never rush to disperse funds by wire transfer, particularly from your trust account, and especially to an apparently unrelated third party offshore. If the client is impatient and pressuring you to send funds immediately, you can almost bet you're dealing with a scammer. Always wait for the check to clear. Keep in mind, however, that "cleared" can be an ambiguous term. As a courtesy, many banks make funds available to customer accounts before a deposited item is actually paid by the payor bank. To be on the safe side, call your bank for clarification.
- **Follow online security best practices**—Remember that cybercriminals attack silently and without warning. Key areas to focus on fortifying include:
 - Segregation—Dedicate one laptop or desktop computer for banking transactions only. Do not use it for any other purpose, and do not conduct banking transactions on other devices.
 - Passwords—Have a password consisting of nothing more than eight lowercase letters? It would take a hacker an average of just two hours to guess it. The more variation you add in the form of uppercase letters, numbers and symbols, the longer it would take to crack. You also want to make sure to change your passwords every 90 days, never use the same password twice, and never keep them stored near computers or sensitive records.
 - Encryption—Stolen laptops, lost thumb drives and vulnerable backup systems are the leading sources of data breaches. Be sure these and wireless networks are encrypted.
 - Software—Every desktop computer, laptop and mobile device should be equipped with firewall, anti-virus, anti-spyware and anti-spam software. For best results, use one single integrated product across the board.
 - Server room—Your server room should be kept locked at all times.
 - Employees—When a staff member is terminated or resigns, immediately delete that person's online credentials and sever all possible network access, including remote.

The Bottom Line

It bears repeating: The only truly effective way to protect your firm from the detrimental aftermath of fraud is to prevent it. Institute official office policies concerning things like the handling of cashier's checks and online security measures. Make them readily available in black and white, train your staff on them at least once per year and reference them often in staff meetings and employee reviews.

Above all else, practice common sense and trust your instincts. If a transaction feels suspicious or sounds too good to be true, it probably is.

Steve Luna is a Vice President and Branch Manager of the Union Bank branch in Modesto. Steve can be reached at 209-576-2020 or steve.luna@unionbank.com

¹ "Feds: KEL law firm scammed out of \$285K," Amy Pavuk, *Orlando Sentinel*, Jan. 19, 2012, http://articles.orlandosentinel.com/2012-01-19/news/os-kel-law-firm-scammed-20120119_1_kel-englett-and-lynd-bank-account, accessed June 7, 2013

² "Law firm fell victim to phishing scam, precipitating \$336K overseas wire transfer, bank suit alleges," Debra Cassens Weiss, *ABA Journal*, April 4, 2013, http://www.abajournal.com/news/article/law_firm_fell_victim_to_phishing_scam_precipitating_336k_overseas_wire_tran, accessed June 7, 2013

³ "Why are Cyber Attacks on Law Firms Such a Significant Threat?" Trey Tramonte, *eDiscoveryInsight.com*, March 15, 2013, <http://ediscoveryinsight.com/2013/03/why-are-cyber-attacks-on-law-firms-such-a-significant-threat>, accessed June 7, 2013

NEW LAWYER'S RECEPTION

April 2nd, 2015

Hosted by the Stanislaus County Bar Association and Bank of Stockton / Modesto Commerce Bank

The Stanislaus County legal community congratulates and welcomes each of our New Lawyers!

This reception will be a new annual Bar Event and we invite ALL individuals in our legal community to attend. This reception is designed to meet our newest members and you do not need to be an attorney or a fresh graduate of the bar exam.

We welcome everyone to join us next year too!
"Do not miss out on the 2016 New Lawyer's Reception!"



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57TH ANNUAL LAW DAY LUNCHEON

Gallo Center for the Arts ~ May 8th, 2015

Keynote Speaker: California Supreme Court Associate Justice Goodwin H. Liu



The Bar Association sends a very grateful and sincere thank you to the Honorable Ricardo Cordova, for selflessly providing our Keynote Speakers for the last few years!

NEW JUDGE'S LUNCHEON ~ Galletto's Ristorante ~ April 10th, 2015



Congratulations Hon. Alan Cassidy & Hon. Ruben Villalobos!

28TH ANNUAL SCBA GOLF TOURNAMENT

TOURNAMENT HIGHLIGHTS: This year was the most profitable tournament since its inception back in 1987! There were a total of 73 players that attended, which is up 23% from 2014.

SOME OF THE WINNERS WERE:

- *First place net score of 52: Jeff Mjueller, Daniel Peña, Jesse Contreras, Jesse Ochoa*
- *First place gross score of 55: Larry Niermeyer, Ted Mills, Anthony Maxwell, Donnie Dw*

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- 4-some to Oakdale Golf & Country Club
- Prime Shine car wash passes
- Golf Lessons

ON COURSE HIGHLIGHTS INCLUDED: Velvet Creamery serving homemade ice cream all day; Renee Brush and friends serving Mimosas, Fireball, jello-shots and other beverages; and the sweet aroma of fine cigars, courtesy of Mark Nelson.

If you missed the golf tournament this year, there is always next year – so come on out for a fun day in the sun. Exercise, socialize, eat, drink and be merry! For those who did attend, we sincerely appreciate your unwavering support. Thank you!

Stanislaus County Bar Association
SPECIAL THANKS TO ALL OF OUR 2015 GOLF TOURNAMENT SPONSORS!

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SCBA's 28TH Annual Golf Tournament

May 30, 2015 ~ Dryden Park Golf Course, Modesto



SCBA's 28TH Annual Golf Tournament

May 30, 2015 ~ Dryden Park Golf Course, Modesto



"MEMBERSHIP APPLICATION"



2015

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*New Attorney Member: Person who has not been a member of the SCBA for the last consecutive 3 years.
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***Scholarship Fund: Please join us in supporting the Scholarships we present annually towards local area high school students futures in the legal field, by contributing today along with your membership dues.

DEADLINE IS FEBRUARY 1, 2015

Paid SCBA Members have the option to advertise their firm/self, on our website's ATTORNEY DIRECTORY section at STANBAR.ORG. Paid SCBA Members require the box above to be checked to renew annually.
For more information contact us STANBAR.ORG or (209) 571-5729.



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