ASSOCIATION OF BUSINESS TRIAL LAWYERS SAN DIEGO

abtl REPORT

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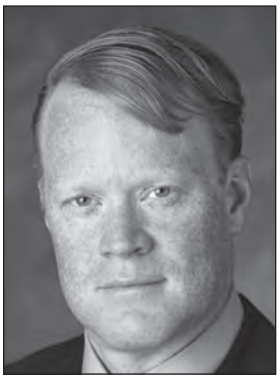
Employers Are Gaining Traction In Enforcing Restrictive Covenants To Protect Trade Secrets

By Colin H. Murray, Esq. and Jason K. Petrek, Esq., Baker &McKenzie LLP

California has a strong, historic and codified public policy against agreements preventing open competition involving former employees. But California employers have enjoyed some success in the courts enforcing restrictive covenants against former employees under a judicially crafted exception to that public policy, which allows them to protect trade secrets. The intersection between the ban on non-competition clauses, on the one hand, and the right to protect trade secrets, on the other, is a place where commercial litigators often find themselves delicately walking a thin line. Recently, two California appellate courts addressed the question whether agreements affecting or restricting competition can lawfully protect more than what the law of tort would otherwise proscribe. The holdings of these cases suggest that: if the employee's conduct is not actionable in tort, the employer will find limited relief, if any, in contract. What's more, employers seeking to



Colin H. Murray

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Briefing Common Civil Motions: Common Pitfalls and a Few Common-Sense Suggestions

By Hon. William S. Dato, San Diego Superior Court

To our grandparents' generation, letter writing was an art form. But it is an art that has now nearly disappeared. With the almost-universal availability of cell phones, voice mail, e-mail, texting and instant messaging, minimalist shorthand communication is the norm. Thoughtful composition is becoming a thing of the past.

For some of the same reasons, perhaps, good written advocacy in trial courts seems to be on its way to becoming an anachronism as well. Litigators are seemingly always pressed for time, so technological advances have allowed them – like everyone else – to do more work fast-

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Inside

President's Letter

By Edward M. Gergosian, President ABTL

Edward M. Gergosian

As we approach the end of the year, I reach the end of my term as President of the San Diego Chapter of ABTL. It has been an honor to serve as president, and over the past year, the chapter has accomplished much under the leadership of several individuals, all of whom deserve our thanks.

Tom Egler and Anna Roppo (treasurer) organized our six dinner programs, with the assistance of our secretary, Judge Margaret McKeown (who brought Harry Schneider back to talk about Guantanamo and the trial of Salim Hamdan and also solicited the former U.S Attorneys who spoke about their 2008 firings), past president Magistrate Judge Jan Adler (who asked Dean Erwin Chemerinsky to speak to us about the Supreme Court's past and current terms), and Edward Chapin, who introduced us to Judge William Wilson and judicial civility. We are also indebted to Superior Court Judges Ronald Prager, Ronald Styn, Steven Denton, John Meyer, Linda Quinn and Joan Lewis who spoke on the workings of our local court, and to Chris Ritter for speaking on bringing it all together for the jury.

Guided by Brian Foster and Colin Murray, ABTL San Diego's Leadership Development Committee put on three fascinating and well–received nuts and bolts seminars for young lawyers, on technology and the courts, navigating e-discovery disputes, and ethical issues for young lawyers. Our LDC is to be commended for these fine programs.

Under Judge Janis Sammartino's leadership, our Judicial Advisory Board has grown and is now working with the LDC to promote informal interaction between the bench and the younger lawyers in our community.

Charles Berwanger organized four meet the judge events this year that we co-hosted with the State Bar Litigation Section. Judges Sammartino, McKeown, Michael Annello and William Dato graciously gave of their time to provide attendees with their thoughts on the practice of law in their courtrooms.

The San Diego chapter served as host of this year's very successful Annual Seminar, under the leadership of Marisa Janine-Paige and Alan Mansfield (also the editor for the past several years of this very ABTL Report).

This year our member Bob Brewer was recognized with the Daniel Broaderick Award, which goes to the attorney that best exemplifies civility, integrity and professionalism. It is a well deserved honor for one of ABTL's finest.

Thanks to all of you, the annual holiday giving program provided gift cards to participants in San Diego Superior Court's Juvenile Dependency and Delinquency Program.

On a sad and happy note, we bid adieu at years' end to Susan Christison, our executive director for the past 15 years. As any of my predecessors can tell you, Susan has been indispensable and provides each new president with the institutional knowledge of ABTL. She will be missed.

This is quite an impressive performance for one year in the life of an organization. It could not have been done without the efforts of all the people mentioned above and the support of each of you. Please join me in welcoming Mark Zebrowski as our president for 2010. I looked forward to his leadership as he guides our chapter through what promises to be another eventful year for ABTL San Diego. ▲

In re Tobacco II: Reflecting On The California Supreme Court's Decision

By Jaikaran Singh, Esq. of Luce, Forward, Hamilton & Scripps LLP

In the Winter 2009 issue of the ABTL Report, we predicted how the California Supreme Court might decide the much publicized *In re Tobacco II Cases*. We did this based on our view of the plaintiff and defense perspectives on what we perceived to be the key questions.

On May 18, 2009, the Court issued its long awaited decision. *See In re Tobacco II Cases* (2009) 46 Cal.4th 298. The majority opinion, in which four of the seven Justices joined, holds that the Unfair Competition Law's (UCL) standing requirements, including showing actual reliance, apply only to the named class representative, and not all absent class members. Likewise, the Court ruled that a class representative who brings a UCL claim based on an alleged misrepresentation must demonstrate actual reliance on the allegedly deceptive or misleading statements, in accordance with well-settled principles regarding the element of reliance in ordinary fraud claims. When the challenged business practice is a long-term advertising campaign, however, the class representative is not required to plead or prove reliance on any particular advertisements or statements.

Jaikaran Singh

The Court's decision is important because it further clarifies the standing requirements imposed on a class action plaintiff under California's UCL (Bus. & Prof. Code, section 17200 *et seq.*), as amended by Proposition 64.

I. The UCL and Proposition 64

The UCL prohibits five separate wrongs: (1) unlawful business practices; (2) unfair business practices; (3) fraudulent business practices; (4) unfair, deceptive, untrue or misleading advertising; and (5) any of the specific prohibitions set forth in section 17500 *et seq.* (governing false advertising). *See Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1554. Only the equitable remedies of restitution and injunctive relief are available under the UCL. *See Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1147.

In addition, with the passage of Proposition 64 on November 2, 2004, a plaintiff seeking to assert a claim for unfair competition must have "suffered injury in fact and … lost money or property as a result of such unfair competition." Bus. & Prof. Code §§ 17204, 17535. In addition, a plaintiff must comply with the class action requirements of Code of Civil Procedure section 382. Bus. & Prof. Code §§ 17203, 17535. Thus, after the passage of Proposition 64, plaintiffs who wish to pursue a claim under Section 17200 must: (1) have suffered actual injury as a result of the defendant's alleged conduct; (2) have lost money or property; and (3) have met the requirements for class actions under Code of Civil Procedure section 382.

An open question, however, remained as to whether the standing provisions of Proposition 64, namely that plaintiff suffered an "injury in fact" and "lost money or property as a result of" the defendants' alleged conduct, applied to just the representative plaintiff or to the other class members as well. That was the primary issue before the California Supreme Court in *In re Tobacco II*.

II. Background on *In re Tobacco II Cases*

Plaintiff Willard Brown filed a class action complaint against several large cigarette manufacturers and related companies in 1997. The complaint alleged that defendants had exposed Mr. Brown and other smokers to the companies' long-term fraudulent marketing and advertising activities in California. In particular, plaintiffs alleged that the tobacco industry defendants manufactured, promoted and distributed or sold tobacco products while concealing that these products contained a highly addictive drug called nicotine. *In re Tobacco II Cases*, 46 Cal.4th at 307. Plaintiffs argued that defendants violated the UCL by

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Tips From the Trenches: An Interview with Jo-Ellan Dimitrius

By Mark Mazzarrella, Mazzarella Caldarelli LLP

As a trial lawyer, I'm sometimes afflicted with the irrational need to make double, triple and quadruple certain that a message hasn't been lost, even when there is little chance it has. So, with that apology, bear with me as I remind you that the purpose of *Tips From the Trenches* is to provide at least a partial substitute for the mentoring that most of the great lawyers of the past enjoyed, but which has not been available generally, at least to the same degree, to most of those of us who are still in practice. Our objective is not to teach black letter law, or even conventional trial advocacy. It is, as the name of the series implies, to provide tidbits of wisdom from those who are best qualified to give them, and which likely would have been imparted over a sandwich at lunch by the senior partner to his mentee in years gone by.

Mark Mazzarrella

This issue I report the results of my interviews with world renowned jury consultant, *New York Times* best selling author, and frequent commentator on trials for the media. I have had the good fortune to work very closely with Jo-Ellan Dimitrius over the past 12 years, both in cases in which she was my consultant, cases in which we were co-consultants, and as co-author of *Reading People and Put Your Best Foot Forward*. In the process, I have spent literally hundreds of hours picking Jo-Ellan's brain, thus making my challenge here to select those few thoughts, concepts and skills that most frequently make a difference in the trials when Jo-Ellan is involved.

For those who don't follow high profile cases, Jo-Ellan was the consultant for Richard Ramirez, the "Night Stalker," for the successful defense in the Rodney King case, for the U. S. Attorneys office in Enron, the prosecution in the first four

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er. But just as e-mail may be quicker but less thoughtful than a letter, many word-processed briefs appear to lose in substance what they gain in speed. Frequently, cut-and-pasted points and authorities seem as poorly fitted to the case as a one-size-fits-all suit. And the brief often lacks an overall perspective, as though it was prepared by an inexperienced associate with little supervision.

But there is a silver lining in this gray cloud. By spending a little more time and giving a little more thought to your written product, you can forcefully distinguish your presentation from that of your adversary and materially improve your chances of success. What follows are some general concepts applicable to motion practice generally, as well as some specific ideas to improve your advocacy on specific motions commonly filed in California state court. The suggestions are practical – some may be no more than common sensical – but all are designed to enhance the overall effectiveness of your writing.

Concise, Clear ... and Interesting!

Judges and research attorneys in Civil IC departments – with more than 600 cases per department – are busy. In an average week, in addition to trials, case management conferences and ex parte applications, we review and rule on about 10-20 substantive motions – from demurrers to preliminary injunctions to anti-SLAPP motions. To be an effective advocate on a law-and-motion matter, it is not sufficient that you write well. You must also write concisely. Well-constructed brevity makes you lots of friends among judges. It also projects a sense of confidence in your argument.

"But," you say, "I'm busy too." To plagiarize Pascal, you would love to write a shorter brief if you only had the time, right? Good writers, however, never file their first draft and neither should you. Editing is part of the writing process. Take the time to distill your brief to its essence. Get rid of unnecessary words and redundant case citations. We probably don't need a page and a half on the standards for reviewing a demurrer or a motion for summary judgment. Get rid of unnecessary arguments and have confidence in your good judgment. If you're not going to win with your best or second-best argument, what are the chances that number eight is going to do it?

The only thing worse than reading a long and ponderous brief is reading it several times because it isn't clear. Remember that judges and research attorneys are, for the most part, generalists. We may know a little about a lot of things, but we're not steeped in the details of the case that you've been living with for the last six months. And if your case is unusual, factually or legally, you should start by assuming that we need to be educated. We probably don't need a treatise (see "concise" supra), but you should lay it out simply and clearly. Take us from Point A to Point D without skipping B and C.

This shouldn't be as difficult as it may seem. After you've written a first draft, show it to someone who is not familiar with your case – perhaps your spouse; perhaps your teenager if you can pry him or her away from Facebook for a few minutes. If all else fails, impose on a colleague in the office who isn't working on the case. If they come back with lots of questions, you probably have some work to do on the brief.

It is particularly important that your statement of facts be understandable and compelling. I have always thought that the factual recitation is the most important part of any brief. After all, lawyers and judges are pretty good at researching the law. If you don't provide us with the right case citations, we may find them anyway. But we can't make up the facts. You have to give them to us in the allegations of the complaint, in exhibits, in declarations, or in testimony.

Most importantly, your brief should tell an interesting story. Think about writers you enjoy reading. There is a beginning, a middle, and an end to their stories. There is a flow. The sentences and paragraphs are likely shorter rather than longer. The style is active. The words evoke images and feelings. Legal writing doesn't have to be different; it doesn't have to be boring.

Many lawyers fall into the habit – "trap" is perhaps a better word – of beginning every sentence with a date, e.g., "On September 22, 2009, plaintiff signed a contract to purchase 2,000 widgets ...." Not only does your writing become repetitive, but you mislead the reader into thinking the date is critical. Unless dates are significant

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– for instance, if the issue involves the statute of limitations – leave them out. You can still tell the story chronologically. Try connecting the events with more generalized bridges like "In response to the letter, Acme cancelled the order," or "Several weeks later, Ramirez returned the phone call."

Legal jargon comes in many forms, but all tend to get in the way of communication. Think about what you would say if you were telling a story to a friend over lunch. You wouldn't say, "plaintiff exited the vehicle"; you would say, "Smith got out of the car." You wouldn't say, "obstructed the easement created for ingress and egress"; you would say, "blocked the driveway." And if you were dashing off a quick e-mail, you surely wouldn't type, "After work I'm stopping by the SULLIVAN SHOE EMPORIUM (hereinafter referred to as 'SULLIVAN')." Stilted language and style distracts the reader and interferes with the flow of your story.

In the end, cases are about people, and people have interesting stories. You have to tell that story in a way that makes the reader want to continue reading. Find a hook. Find a compelling theme. As an effective advocate, it's your job to craft a page-turner. But make it a page-turner with a point: your client should win; your client is entitled to win.

A Word About Professionalism

Famed broadcaster and journalist Edward R. Murrow was not talking about legal advocacy when he said, "To be persuasive, we must be believable; to believable, we must be credible; to be credible we must be truthful." But he could have been. Your credibility is your most important asset. If the court believes you – if the bench trusts you – it enhances every aspect of your legal argument. And if it doesn't? You can probably surmise the answer.

So how can you create, maintain, and improve your credibility? Start by being scrupulously accurate in stating the facts and characterizing the law. Equally important, make it easy for the court to confirm the accuracy of your statements by providing clear cites to the record

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and authorities you are relying on.

Be fair to your opponents. Give them the benefit of the doubt. The court likely will, and you will seem more trustworthy if you do as well. If an ambiguous phrase in your opponent's brief can be taken two ways, give it the most reasonable construction and then address that argument. The court will learn to rely on your statement of the relevant issues.

Avoid pejorative characterizations of the opposing party or opposing counsel's argument, e.g., "despicable," "meritless" or "disingenuous." Instead, show the judge what the problem is and let him/her draw his/her own conclusion. People in general – and judges in particular – do not like to be told what to think. And we are much more committed to an idea if we think it's our own. "Show" rather than "tell' is the mark of a successful advocate.

In addition to enhancing your professionalism, this approach has the added benefit of avoiding potential embarrassment. Let's assume the judge has just read your opponent's brief and found the argument, initially at least, interesting, intriguing, or perhaps even persuasive. Your response attacks with both guns blazing. The contention is unsupportable, ridiculous, even ludicrous. You suggest that only a fool could craft such an argument, strongly implying that only a fool could accept it as well. Inadvertently, you have just insulted your decision-maker. Even if the judge is ultimately convinced that his/her initial reaction was wrong, you may never completely assuage the insult and recover the ground you lost in that courtroom.

Demurrers

Believe it or not, there are judges who think most demurrers are a waste of the court's time and serve largely as billing opportunity for attorneys. So if you're a defense lawyer contemplating a demurrer to a complaint – much less a plaintiff's lawyer thinking about demurring to an answer – take a minute to ask yourself what you hope to accomplish. You may be creating an unintended impression in the mind of the judge that will follow you long after the pleadings are settled.

Putting aside situations where specificity is required – e.g., fraud claims, punitive damages – is the complaint so uncertain that you really can't respond? Is the pleading defect so serious that it can't be corrected? If the net result is likely going to be an easily amended complaint, the benefit to your client may be negligible. Worse yet, you may have provided opposing counsel with a roadmap for future success. A less-than-perfect complaint rarely prejudices a defendant as the case progresses. Consider foregoing the demurrer and starting to prepare your motion for summary judgment.

If demurrers in general are disfavored, a successive demurrer is doubly so. In most cases, having sustained a demurrer with leave to amend, the court will offer some clue as to what is necessary to adequately plead the claim. Often the judge is fairly specific in highlighting areas of concern and noting what is necessary to address them. If the amended pleading appears to address the identified defect(s), a second demurrer that merely repeats the arguments previously made has little chance of succeeding and runs a substantial risk of irritating the judge. Be particularly careful that your argument does not impliedly disparage reasoning that the judge may have found persuasive in granting the plaintiff leave to amend.

If it's worth filing the second demurrer, it's worth not simply regurgitating what you said the first time around. Focus on the court's prior ruling. It should be your starting point, because it certainly will be the judge's. Explain why the plaintiff has failed to meet the court's articulated standard. If you must repeat an argument you made the first time around that didn't make it into the court's first order, be prepared to say something new – cite a new case or attack the issue in a different way.

Discovery Motions

Needless to say, I cannot speak for the court as a whole or any of my colleagues individually. At the same time, I can honestly say I have never met a judge who enjoys hearing motions to compel responses to discovery. I think it has something to do with getting to the merits of a case, something most judges are fond of doing. Almost by definition, a discovery dispute is a distraction from the merits. For whatever reason, somebody is trying to withhold some information that someone else thinks is or may be relevant.

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Of course, we all recognize that there are legitimate extrinsic policy considerations – privacy and privilege come quickly to mind – that sometimes justify the withholding of information. If the only motions to compel we heard involved those legitimate extrinsic policy considerations, we would decide them once in a blue moon. And our law-and-motion calendars would be much less congested.

The reality is that the vast majority of discovery disputes involve garden-variety disagreements about the mundane application of settled discovery principles where one party is – or sometimes both parties are – being unreasonable. So the preparation of a winning motion to compel starts well before you ever put pen to paper or, more accurately, fingers to keyboard: Be reasonable!

If that advice doesn't provide much concrete assistance, consider this. Writing your motion begins when you write your first meet-and-confer letter or even the first confirmatory e-mail. You know – or at least you should – that this correspondence will be attached as an exhibit, either to your motion or to your opponent's opposition papers. If possible, start by acknowledging opposing counsel's legitimate concerns and explain clearly what you want and why you need it, or what you're willing to provide. I am continually amazed how often these missives are styled as the first salvo in a battle rather than as a constructive attempt to avoid and/or resolve conflict. Why wouldn't you write your meet-and-confer letter to make yourself look like the most reasonable and accommodating person in the world? If you do, and the other side responds with a barrage, you're well on your way to winning the motion to compel that hasn't even been written.

Motions for Summary Judgment and Summary Adjudication

Again speaking only for myself, I'm not a big fan of the separate statement of undisputed facts. I am sure it was conceived by someone with good intentions. And occasionally, particularly in simple cases, it can help isolate a key issue. But the reality is that the separate statement tries to make good lawyers out of mediocre ones by legislating structural orthodoxy. As is so often the case with attempts to mandate competence, the rules are generally followed by the people who didn't need help in the first place. The others find frustratingly creative ways to avoid following the rules or turn them into tools of waste and obfuscation.

A good brief on a motion for summary judgment or summary adjudication already identifies the undisputed facts. It then applies the relevant legal principles to the undisputed facts to reach a conclusion. If the brief is well written, there is no need for anything else. Which also means that if I'm spending a lot of time with your separate statement, that's probably not a good sign.

Summary judgment and summary adjudication tend to be among the most lengthy and complicated of motions. Particularly if you have a substantial record, your first thought should be how to simplify your presentation and avoid overwhelming your reader. This starts with the way you organize the evidence. The rules of court are not very specific about how to present evidence, so this gives you some flexibility. (See Cal. Rules of Ct., rule 3.1350(c)(4), (e)(3), and (g).) Especially in a document-intensive case, consider a sequentially paginated appendix of exhibits in support of or opposition to the motion, with multiple volumes if necessary. Citation to the exact page you want becomes simple, e.g., "2 Pltf.'s App. 162." Keep the volumes of manageable size, and pay attention to how they are bound. No one likes to be looking for a specific document and have the entire package come apart and land at your feet.

I often see numerous mini-excerpts from the deposition of the same witness, each consisting of 2-3 pages tabbed as a separate exhibit. Instead, consider submitting a single exhibit labeled "Excerpts from the Deposition of Joe Smith." It helps your reader learn where the depositions of the major players in the case are located. Later, if we want to locate something Joe Smith said, it's a much easier task.

Once you organize your evidence clearly and simply, spend a few minutes thinking about how your reader is going to find the important evidence. It may surprise you to know that we don't generally read your evidentiary exhibits

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and declarations from cover to cover just to see what's there. It is your job in your brief to direct us to the critical evidence. You do that by citing us to the relevant documents. Yet you would be amazed how often lawyers seemed determined to keep us away from the foundational evidence, i.e., deposition testimony, declarations, and evidentiary exhibits. Instead of citing to these documents, a lawyer will cite to the separate statement, which in turn cites the foundational source. When I'm reading one of these briefs, my desk is even more cluttered than it usually is and everything takes twice as long because I have to look at two documents instead of one. Remember – just as your opening statement at trial is not evidence, neither is your separate statement in your motion for summary judgment or summary adjudication.

While we're on the subject of evidence, let's talk about evidentiary objections. They are exceedingly overused. No good trial lawyer would object to every piece of evidence offered by the other side at trial. You would completely alienate the jury inside half an hour. Why would you think knee-jerk boilerplate objections on a motion for summary judgment would be more successful? Ask yourself, "Does this piece of evidence really make a difference, and do I really have a legitimate objection?" If the answer to either question is "no," skip the objection.

And never make a relevance objection on a motion. Instead, just explain in your argument why the evidence isn't relevant, which you would have to do anyway in arguing your objection. You're not before a jury. It's not as though the court will be confused by evidence it considers irrelevant.

If you discover that you and your opponent are going to be filing cross-motions for summary judgment or summary adjudication, discuss the possibility of a special briefing schedule to avoid unnecessary and repetitive briefs. Typically you can reduce the usual six briefs to four: (1) opening brief on Motion #1; (2) combined opposition on Motion #1/opening on Motion #2; (3) combined reply on Motion #1/opposition on Motion #2; (4) reply on Motion #2. If you can agree on a schedule with opposing counsel, you can submit it as a stipulation. If the other side won't agree, at least consider proposing it to the court by way of an ex parte application.

Finally, keep the big picture in mind. Like demurers, the rules applicable to motions for summary judgment favor the non-moving party. Don't just bring the motion as a matter of course. If you're considering it, think about whether you have a realistic chance of success. You may do no more than alert your opponent to the weaknesses of his/her case and provide an opportunity for them to be corrected before trial.

A Concluding Thought

For 95 percent of the motions filed in superior court, the result is determined by the briefs. So I have always found it slightly paradoxical that oral arguments on significant motions are reserved for senior partners, but briefing is often left to less experienced associates. Writing is a craft that requires time, preparation, and attention to detail. But if a successful motion practice is your ultimate goal, it is well worth the effort. ▲

Trade Secrets

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enforce contractual clauses purporting to protect more than just trade secrets may expose themselves to liability for unfair competition.

I. Free Competition v. Trade Secrets

A. California's Ban on Non-Competition Clauses

California is arguably the most aggressive protector of the right to work in the fifty states. In many states, restraints on the practice of a profession, trade, or business are valid if reasonably tailored in term of length of time, distance and scope. California rejected this approach in 1872, and its policy favoring open competition is embodied in Business and Professions Code Section 16600 ("Section 16600"). Subject to limited exceptions, under Section 16600, "every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

The Supreme Court generally disapproves of agreements affecting open competition; it recently reiterated its view of such agreements in *Ed-*

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wards v. Arthur Andersen LLP (2008) 44 Cal.4th 937. In *Edwards*, the Supreme Court considered the validity of a particular non-competition agreement in light of Section 16600. Edwards, a tax manager, sued his former employer, Arthur Anderson, for conditioning his employment on his signing an agreement containing non-compete and non-solicitation clauses. The Supreme Court held the agreement was invalid because it restrained the tax manager's ability to practice his accounting profession, concluding Section 16600 "prohibits employee non-competition agreements unless the agreement falls within a statutory exception." (those exceptions involve non-competition agreements in the sale or dissolution of corporations, partnerships, and limited liability companies; see Bus. & Prof. Code §§ 16601, 16602, and 16602.5).

The employer argued in favor of adopting the "narrow-restraint" exception recognized by the Ninth Circuit Court of Appeals in a 1987 opinion (*Campbell v. Trustees of Leland Stanford Jr. Univ.* (9th Cir. 1987) 817 F.2d 499), allowing for the enforcement of non-compete clauses if they prevented the former employee from pursuing only a small or limited part of the trade. The California Supreme Court rejected the "narrow-restraint" exception to Section 16600, stating: "Section 16600 is unambiguous, and if the Legislature intended the statute to apply to restraints that were unreasonable or overbroad, it could have included language to that effect. We . . . leave it to the Legislature, if it chooses, either to relax the statutory restrictions or adopt additional exceptions to the prohibition-against-restraint rule under section 16600." *Edwards*, 44 Cal.4th at 950. Along with disapproving of even narrowly drawn non-competition agreements, the Supreme Court referred briefly to the trade secret exception in a footnote, but dismissed it as inapplicable. *Id.* at 946, fn. 4. The Supreme Court thus did not address the inherent and fundamental conflict between Section 16600 and the trade secret exception.

B. The Trade Secret Exception

In addition to the limited statutory exceptions pertaining to the sale or dissolution of corporations, partnerships, and limited liability companies set forth above, courts have long recognized that Section 16600 does not invalidate covenants affecting competition where necessary to protect the employer's trade secrets. The courts have held employees may not misappropriate the former employer's trade secrets to compete unfairly with the former employer.

The origin of the so-called "trade-secret exception" to Section 16600 may be found in a series of three trade -route cases decided in the 1950's, involving salesmen who quit the same house-to-house installment sales business. Those salesmen visited each home once a week on a scheduled day, collected payments, and sold new merchandise to regular customers who could be counted on to buy month after month and year after year. The salesmen knew not just the customer's identity, but the balance due, the kind of products purchased in the past, the payment history, and the source of the referral. The courts upheld covenants barring the salesmen from soliciting business from customers for one year after termination of employment. See *Gordon v. Landau* (1958) 49 Cal.2d 690; *Gordon v. Schwartz* (1956) 147 Cal. App. 2d 213; and *Gordon v. Wasserman* (1957) 153 Cal. App. 2d 328.

In accordance with these principles, California courts repeatedly have held a former employee may be barred from soliciting existing customers to redirect their business away from the former employer and to the employee's new business if the employee is utilizing trade secret information to solicit those customers. *See, e.g., American Credit Indemnity Co. v. Sacks* (1989) 213 Cal. App. 3d 622, 634; *Aetna Bldg. Maintenance Co. v. West* (1952) 39 Cal.2d 198, 204-206. Thus, it is not the solicitation of the former employer's customers, but is instead the misuse of trade secret information, which may be enjoined.

II. *The Retirement Group v. Galante*

On July 30, 2009, the Fourth District Court of Appeal decided *The Retirement Group v. Galante* (2009) 176 Cal. App. 4th 1226 ("Galante"), on July 30, 2009. *Galante* is the first published California case to discuss the *Edwards* decision's reference to the trade secret exception.

In *Galante*, four investment advisors left a securities firm located in San Diego to start their own business. The Firm sued the advisors, alleging the advisors had misappropriated the firm's

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trade secrets, names, customer lists and other confidential information stored in a secure database. The Firm also accused the advisors of using the trade secrets to solicit the firms' existing clientele.

The Firm sought a preliminary injunctive order prohibiting the advisors from soliciting current customers. The Superior Court granted the Firm's motion for a preliminary injunction, enjoining the advisors from several categories of conduct, including, "directly or indirectly soliciting any current TRG customers to transfer any securities account or relationship from TRG to the advisors" (the "Solicitation Category"). The Court also enjoined the advisors from "using in any manner TRG information found solely and exclusively on TRG databases" (the "Trade Secret Category"). The Court exempted from the Trade Secret Category "similar information found on servers, databases, and other resources owned and operated by other entities or businesses." The Advisors appealed the injunction, challenging the propriety of the trial court's order as to the Solicitation Category.

The Firm asserted that the Solicitation Category was a valid protection of its trade secret information, arguing the conduct enjoined by the Solicitation Category falls outside of the boundaries of Edwards, because Edwards expressly excepted from its ruling non-competition clauses falling within the trade secret exception to Section 16600. The Court of Appeal rejected the Firm's argument, noting the Supreme Court "did not approve the enforcement of non-competition clauses whenever the employer showed the employee had access to information purporting to be trade secrets," it merely declined to address the trade secret exception because it was not germane to the claims raised by the employee. Id. at 1239. Thus, because of Section 16600, the trade secret exception could not allow a party to augment the rights available to it under tort law by creating additional duties by contract.

Rather, to determine the validity of the Solicitation Category, the appellate court examined—and to some extent resolved—the tension between two competing legal principles in California: Section 16600 and the trade secret exception. After discussing Edwards and other cases considering Section 16600, the Court of Appeal explained: "Section 16600 bars a court from [enforcing] a *contractual* clause purporting to ban a former employee from soliciting former customers to transfer their business away from the former employer to the employee's new business, but a court may enjoin *tortious* conduct . . . by banning the former employee from using trade secret information to identify existing customers, to facilitate the solicitation of such customers, or to otherwise unfairly compete with the former employer." *Galante*, 176 Cal. App. 4th at 1238 (emphasis in original). The Court of Appeal concluded: "the conduct is enjoinable *not* because it falls within a judicially created 'exception' to section 16600's ban on contractual non-solicitation clauses, *but is instead enjoinable because it is wrongful independent of any contractual undertaking*." *Id.* (emphasis added). Therefore, the Court of Appeal held that while the Trade Secret Category of the injunction was valid, the Solicitation Category was not.

III. *Dowell v. Biosense Webster*

Another recently published decision from the Second Appellate District illustrates the importance of *Galante*. In *Dowell v. Biosense Webster, Inc.* (filed Oct. 20, 2009) 2009 Cal. App. LEXIS 1860, former employees and their new employer brought a lawsuit against their former employer to enjoin it from enforcing non-compete and non-solicitation clauses in employment agreements used in California. (The *Dowell* opinion was initially unpublished, but the Court of Appeal certified it for partial publication on November 19, 2009.) The Court of Appeal affirmed the trial court's order granting summary adjudication, holding the clauses were facially void under Section 16600. Moreover, the Court of Appeal held the employer violated California's Unfair Competition Law because the illegal non-compete agreement was an unenforceable contract to restrain trade, the use of which constituted unfair competition.

The Court of Appeal rejected the employer's argument that the clauses were valid under the so-called trade secret exception. After stating it "doubt[ed] the continued viability of

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the common law trade secret exception to covenants not to compete," the Court of Appeal held: "the non-compete and non-solicitation clauses in the agreements are not narrowly tailored or carefully limited to the protection of trade secrets, but are so broadly worded as to restrain competition."

Although unpublished, the Court of Appeal's opinion in *Dowell* indicates there is some doubt, at least at the appellate court level, on whether the trade secret exception even survived Edwards, especially when considered in combination with Galante. The decision also highlights the potential exposure of employers for unfair competition should they attempt to enforce overreaching non-compete and non-solicitation clauses.

IV. Conclusion

A few lessons may be learned from *Galante* and *Dowell*. First, employers seeking to prevent former employees from competing against them unfairly should exercise caution when drafting restrictive covenants. Rather than attempting to prevent former employees from any and all contact with former clients, employers should focus their efforts on protecting specific, protectable trade secrets: information which derives economic value because it is not generally known to the public. Second, even if the client desires to reap the benefit of broad language in an employment agreement, the safer course is to bring the action in tort if possible, where the agreement will be used as a factor in determining the employers' diligence and efforts to protect its trade secrets. Indeed, pursuing relief in contract could expose the employer to liability for unfair competition. ▲

Tobacco II

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running a deceptive advertising campaign concerning the addictive nature of nicotine and the relationship between tobacco use and disease. In 2001, the trial court certified the case as a class action under the UCL. *Id.* at 309.

After the standing requirements for UCL lawsuits by private individuals were changed by the passage of Proposition 64, defendants successfully moved to decertify the class. *Id.* at 310. The trial court ruled that to establish standing under Proposition 64, the individual plaintiffs and all class members were now required to show injury in fact consisting of lost money or property caused by the unfair competition. The trial court found that this requirement of individual reliance caused individual issues to predominate over the common questions so as to make the case unsuitable for class treatment. *Id.* at 310-311.

The Fourth District Court of Appeal (Division One) affirmed the trial court's order decertifying the class action. In doing so, the court reasoned that numerous individual determinations regarding the class members' exposure and reliance on defendants' alleged misrepresentations and deceptive statements rendered the case unsuitable for a class action. *Id.* at 311.

III. The California Supreme Court's Decision

In *In re Tobacco II Cases*, the California Supreme Court was faced with the following legal issues: (1) In order to bring a class action under the UCL, as amended by Proposition 64, must every member of the proposed class have suffered "injury in fact," or is it sufficient that the class representative alone comply with that standing requirement?; and (2) What is the causation requirement for purposes of establishing standing under the UCL, and in particular, what is the meaning of the phrase "as a result of" in Business and Professions Code Section 17204?

A. Do the Proposition 64 Standing Requirements Apply to All Class Members, or Just the Named Plaintiff?

The Court held that where the class action requirements have otherwise been met, Proposition 64 requires only the named class representative, and not the absent class members, to satisfy the standing requirements of the UCL. *In re Tobacco II Cases,* 46 Cal.4th at 324. The Court initially reasoned that the language of Proposition 64, and in particular, the initiative's use of the terms "person" and "claimant" in the singular forms, evidenced that the drafters intended only the class representative (who filed the lawsuit) to meet the standing requirements of Proposition 64. The Court also saw no indication in the Proposition 64 ballot pamphlet materials that absent class members must establish standing under Proposition 64. In addition, the Court believed that imposing a standing requirement on absent class members was not consistent with the purpose of Proposition 64 – to prevent "shakedown" lawsuits by private parties who are unaffected by the defendant's alleged wrongful conduct. The Court found additional support in federal class action principles, which it viewed as not requiring absent class members to show standing. *Id.* at 315-319.

In addition, the Court noted that the remedies provisions of the UCL, which remained unaltered by Proposition 64, supported its holding that Proposition 64's standing requirements applied only to the named class representative and not to all class members. In particular, the Court reasoned that an injunction, which it viewed as the primary form of relief available under the UCL, would not serve its intended purpose of preventing future harm if only those who had already been injured by the business practice were entitled to relief. Similarly, the Court found that the language of section 17203 regarding the availability of restitution is "patently less stringent" than the standing requirement for the class representative under Proposition 64, and therefore does not suggest an intent to require individualized proof for restitution by class members. *Id.* at 319-320.

In reaching its decision, the Court rejected the view of standing advocated by defendants and used by the trial court. The Court determined that the cases cited by defendants did not address standing under the UCL, but instead dealt with the issue of whether an ascertainable class existed. The Court pointed out that plaintiffs still needed to demonstrate the class action requirements of numerosity, commonality, typicality and adequacy of representation to obtain

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certification. The Court also explained that applying the standing requirements of Proposition 64 to the class representative but not absent class members is consistent with its prior observation in *Mervyn's* that Proposition 64 did not change the substantive law. *See Californians for Disability Rights v. Mervyn's*, LLC (2006) 39 Cal.4th 223, 232.

Justice Baxter, joined by Justices Chin and Corrigan, dissented from this part of the Court's opinion. Justice Baxter explained that both state and federal class action principles support the lower court's interpretation that all class members must satisfy the standing requirements of Proposition 64. He believed that the court's decision was inconsistent with Proposition 64's primary purpose of preventing UCL class actions by plaintiffs who were uninjured. He wrote, "Even if the majority's holding has some sympathetic appeal on the particular facts alleged here, the rule the majority announces will apply equally to less egregious cases, where it invites the very kinds of mischief Proposition 64 was intended to curtail." *In re Tobacco II Cases*, 46 Cal.4th at 330-331. Justice Baxter went on to point out that the majority opinion would allow non-injured class members to recover as part of a class action if the named plaintiff could satisfy the Proposition 64 standing requirements. *Id.* at 335-336.

B. Does Proposition 64 Create a Requirement of Actual Reliance?

The second related issue in *In re Tobacco II* is whether the "as a result of" language in Proposition 64 requires proof of "actual reliance" in misrepresentation cases. The Court found that the

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class representative must show actual reliance on the alleged misrepresentation to have standing. The Court, however, limited its holding to claims under the fraudulent prong of the UCL. Thus it left open the question of how Proposition 64 impacted the causation analysis under the "unfair" and "unlawful" prongs. *In re Tobacco II Cases*, 46 Cal.4th at 326.

Actual reliance under the UCL can be established by showing that the misrepresentation or nondisclosure was an "immediate cause of the injury-producing conduct." *Id.* at 326. A plaintiff can demonstrate this by proving that he or she would not have "in all reasonable probability" engaged in the conduct that caused injury without the defendant's misrepresentation or nondisclosure. *Id.* at 326-327. The Court qualified its finding by stating that while a plaintiff must show that the misrepresentation was an "immediate cause of the injury-producing conduct," he or she need not show that it was the only cause, or even the predominant or decisive cause. Rather, it is enough to show that the misrepresentation or nondisclosure "played a substantial part" in influencing the conduct that caused injury. *Id.* at 327.

The Court looked to two prior tobacco case decisions (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640 and *Whitely v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635) to articulate a "framework" for what plaintiffs must plead and prove to establish the element of reliance in fraudulent business practices claims. First, actual reliance may be presumed where the misrepresentation is material. *Id.* at 326. A misrepresentation is "material," the Court explained, if a "reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question." *Id.* at 327. Second, where the misrepresentation is part of a long-term advertising campaign, plaintiff is not required to plead with an "unrealistic degree of specificity" the he or she relied on specific advertisements or statements. *Id.* at 328. Rather, the plaintiff need only show that the decision in question was "influenced and reinforced by" defendants' misleading advertisements. *Id.* at 327. Third, the availability to the consumer of alternative information or information contrary to the challenged representation does not defeat a showing of reliance. *Id.* at 328.

C. The Impact of the Supreme Court's Decision in *In re Tobacco II*

The Court's decision is significant for two reasons. Initially, the Court held that the standing requirement under Proposition 64 only applied to the named plaintiff, thereby eliminating the need for absent class members to show individualized reliance. This standard shifts the focus of the standing analysis entirely on whether the class representative meets the requirement. But as the dissent pointed out, this could arguably lead to a strange result where non-injured class members (who could not pursue individual UCL claims) could recover as part of a class action. *In re Tobacco II Cases*, 46 Cal.4th at 335-336. This seems inconsistent with Proposition 64's stated purpose to prevent lawsuits where the claimant has not been injured. See *Mervyn's,* 39 Cal.4th at 232 ("Proposition 64 does prevent uninjured private persons from suing for restitution on behalf of others. . . . In effect, section 17203, as amended, withdraws the standing of persons who have not been harmed to represent those who have."). However, plaintiffs who seek representative relief on behalf of others must still meet the class action requirements of Code of Civil Procedure Section 382, which includes the requirement that named plaintiffs have claims that are typical of the class they seek to represent. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. So at some level there must be consistency between the claims of the named representative and the class members.

In addition, the Court interpreted the "as a result of" language in section 17204 to require a showing of actual reliance, at least for claims under the fraudulent prong of the UCL. In particular, a plaintiff must show that the misrepresentation or nondisclosure was an "immediate cause" of plaintiff's harm. The Court clarified that when the alleged deceptive statements or omissions are part of a long-term advertising campaign, the plaintiff is not required to plead or prove individualized reliance on specific state-

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ments or omissions. But the Court's decision leaves open the question of whether reliance on specific misrepresentations is required in cases not involving "long-term advertising campaigns." Likewise, it remains unclear what standard of causation applies in UCL cases brought under the "unlawful" or "unfair" prongs. Issues relating to these unanswered questions are likely to be disputed in future cases.

IV. Defendants' Petition for Rehearing

On June 2, 2009, the tobacco industry defendants filed a petition for rehearing with the Supreme Court. Defendants argued that the Court's opinion fails to address the substantial federal authority that holds that Rule 23 of Federal Rules of Civil Procedure requires absent class members to share the same standing as the class representatives. Defendants maintained that the Court instead mistakenly relied on an "aberrant" decision that was subsequently vacated by the Fifth Circuit Court of Appeals. Moreover, defendants argued that rehearing should be granted because the Court's decision conflicts with the law by allowing the class action procedural device "to transform the individual claims it aggregates" given that each claim, if brought individually, would require a showing of standing under Proposition 64. On August 12, 2009, the Court denied defendants' petition for rehearing. ▲

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Rampart cases, and the list could consume this entire article. What is most impressive is not that she has been selected to serve as a jury consultant in so many cases, but the fact that she has been on the winning side in almost every single one of them. So here goes my distillation of over a decade of discussions with the jury consultant *Newsweek* called "the Seer" because of her uncanny ability to know what arguments, theories, witnesses, parties and even attorneys will strike a favorable chord with jurors.

Mazzarella: "Jo-Ellan, what is the most common advice you find yourself giving lawyers as they prepare their cases, thematically as well as with respect to the nuts and bolts of the presentation?"

Dimitrius: "Progressively more in recent years I find myself suggesting the probable reaction to the likely juror be tested by anything from a quick and inexpensive internet survey, to more involved and costly focus groups and mock trials. This type of research was not typical 10 or 20 years ago, and it was quite expensive because there were not many people doing. However, as attorney's rates have increased, the cost of most jury research has not, making it quite cost-effective. When on a limited budget I often tell my clients "skimp somewhere else if you have to, but at least do some jury research."

Mazzarella: "I know a lot of lawyers, especially the more seasoned ones sometimes think that is a waste of time because they can be guided effectively by their years of experience. Is that true?"

Dimitrius: "It's more true for some than for others. Certainly the experience a lawyer has had helps predict the potential jurors' reaction. This is even more true if a lawyer has practiced the same type of law in front of jurors with the same demographic mix his or her entire career. But the world of the courtroom has changed. Lawyers usually don't have the benefit of a lot of continuity. As a result, the only way to maximize your understanding of what will appeal to whom is to try it out and see. I've found that it is frequently the most experienced lawyers who are most impressed by how much jury research can help focus and prepare a case."

Mazzarella: "Apart from research and mock exercises, what have you found to be the keys to success for those lawyers who just seem to win all the time, no matter what dogs they are trying?"

Dimitrius: "The most successful trial lawyers I've ever known have one trait in common. They all think like jurors, or at least they are keenly aware of how ordinary people react to the drama that is created as peoples' lives collide. If a lawyer can't stop thinking and acting like a lawyer, I would recommend he or she pursue a transactional practice; because after 30 years and almost 900 trials I can assure every single one of your readers that if they walk and talk and think like lawyers in front of juries, they will be creating an unnecessary obstacle to success. Do NOT over intellectualize every issue as if you were writing a law school exam or law review. Write down your initial impression of your case's strengths and weaknesses and keep you notes handy so you can refer to them as you fight the tendency to start believing your own press as the case progresses. If in doubt take the time for frequent "reality checks" with "real people" who haven't been brainwashed by law schools to believe jurors follow the law. They don't. They follow their hearts. If you think you can overcome a naturally strong aversion to your case with some technical argument, I would suggest you bring a Motion for Summary Judgment and tee the issue up before a judge, who is LESS likely to let his heart dictate to his head. Although, we've all heard the saying, as it applies to appellate law, "bad facts make for bad law." And this happens at the appellate level. Just imagine what is happening in that jury room. And don't try to impress anyone with big words when little ones serve the purpose just as well. Why risk failing to convey your message by using a word that isn't universally known? Even more so, why risk alienating anyone who thinks you use big words to demonstrate that you are more intelligent than they are?

Mazzarella: "I've seen some trial lawyers try to be "one of the guys" in front of the jury, assuming an almost familiar or casual approach, and others maintain a very formal, and always professional demeanor. Does how the lawyers act in front of a judge or jury rise to the level of one of the "big ticket items" we need to master if we are to be the best trial lawyers we can be?"

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Dimitrius: "I know the typical response to this question is 'just be yourself.' That's great advice for someone who is naturally organized, likeable and charismatic and who communicates effectively without losing some part of the message due to less than ideal personal characteristics and skills. But for someone who comes across as having limited social, organizational, communication and other skills, such advice is a complete cop-out. The fact is, over and over again, our research and that of others has demonstrated that lawyers, like everyone else, need to convey what we call "The Compass Qualities" in Reading People if they are to be effective advocates. The four compass qualities, in order of importance, are "trustworthiness," with includes both honesty and reliability; "likeability," which includes a host of traits like courtesy, attentiveness and compassion, "humility," since nobody wants an arrogant person to have cause for more arrogance, and lastly "capability." It may seem strange that capability doesn't rank higher, but the lawyer's legal skill, while contributing to his or her "trustworthiness" won't win over those who are on the fence. But if a lawyer is disorganized, or otherwise looks like a bumbler, forget the "Columbo" rationalization we've all heard for years by every one who hasn't gotten his or her act together, the jury or judge won't buy it, and, instead, will find you unreliable if you make mistakes, and may even think you are not honest if the jury or judge thinks you must be trying to put something over on them with your miscues.

Mazzarella: "So what is a lawyer to do if he or she doesn't exactly come across as Perry Mason?"

Jo-Ellan: "Well, first, there are a lot of traits that have more to do with effort than with natural talent. Sure, some people are more organized by nature than others, but even those who are totally disorganized can become organized with time and effort, or, if that fails, and the lawyer has the seniority to pull it off, by delegation. As for personal characteristics that might hurt a lawyer, there are programs, special coaches and other vehicles by which virtually all of these limitations can and are addressed effectively. If a lawyer has a thin and weak voice, there are voice coaches. If a lawyer lacks public speaking proficiency, there are groups like The Toastmasters, as well as a host of vendors selling courses, books, tapes and just about everything else imaginable."

Mazzarella: "I know there are literally thousands of tips you could give to lawyers to help them become better at doing what you do, but what I would like to know is, "If you have one trait or characteristic that has most contributed to your success, what is it, and can it be learned or acquired?"

Dimitrius: "This is a virtual 'softball' of a question for me. I have always believed the secret to my success is that I pay attention to the people with whom I interact. By that I mean, I notice things. If I meet a well-groomed, well-dressed lawyer who may seem extremely self-confident at first glance, I may notice that he bites his fingernails, revealing a nervousness or possible lack of true self-confidence that someone less observant might have missed—not because they would reach different conclusions than I from the fact that someone bites his fingernails, but because they just didn't pay close enough attention to notice. Or, I might notice the make of a woman's watch, or note what fragrance she wears, which might not only reveal her spending habits, but perhaps even that she may have chosen a scent that is particularly alluring, which may lead me to other insights about her. And, 'Yes' this is a skill that can be learned and enhanced with practice. All you have to do is make a conscious effort to notice all you can about the people who make a difference in your life, or could if the relationship were cultivated. This may include complete strangers who you need to "size up" to determine if they are a potential physical threat to you, or salespeople, clergy, and others not related to your law practice. But it definitely should include every judge, lawyer, party, witness, juror, court clerk, bailiff, and anyone else involved in "the system."

Mazzarella: "How often in your experience do lawyers actually do that?"

Dimitrius: "Let me answer your question this way. If you had a case pending before an independent calendar judge whom you knew would handle your case through trial, and if your case involved a claim by a fairly young man who was seeking millions of dollars in damages as a result of the defendant's alleged bad acts,

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wouldn't you want to know the judge's likely reaction to a man his age seeking more money in the case than the judge will earn during all his years on the bench? I would. I'm sure you have had similar cases. Have you ever noted what car the judge drives, whether his or her glasses are expensive designer or basic Walmart, whether he or she wears a Timex or a Rolex, and so forth? If the judge is very frugal, he or she is likely to overlay that trait on the facts of your case. Likewise, if the judge enjoys the finer things in life, chances are he or she won't resent the young plaintiff from seeking his piece of the American Pie either. This seems like pretty simple stuff, but most lawyers get so buried in the minutia they don't give attention to the most important component of every drama, the characters."

Mazzarella: "Thank you Jo-Ellan. As hoped, you've given me, and hopefully all the readers, a few great ideas to go out and put into practice."

My personal "tip" for this article is DON'T WAIT TO START DOING WHAT JO-ELLAN HAS SUGGESTED. I know we're all very busy, but if you don't stop right now and figure out how you will start incorporating Jo-Ellan's "tips" into your practice immediately, chances are you never will. ▲

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Correction

In the Summer 2009 edition of the ABTL Report, there was a typographical error in the article entitled *Ethical Issues in Mediating Class Actions* by Howard B. Wiener, Retired Justice of the California Court of Appeal. At the conclusion of the article we failed to correctly credit editing of the article, which should have read as follows: "This is taken from an earlier published article. Justice Wiener thanks Attorney William J. Doyle for editing the article for publication by ABTL." We apologize to the author and editor for this error.

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"D.C. Politics and the Bench: Related or Not?"

Speaker: Kenneth W. Starr, Dean, Pepperdine University School of Law

Kenneth Starr, former Independent Counsel, Solicitor General and U.S. Court of Appeals judge for the District of Columbia, brings a wealth of knowledge of the judicial system and the workings of politics to his discussion, "Politics and the Bench: Related or Not?" Dean Starr has been a longtime participant and keen observer of how our nation's capital functions, or malfunctions. He'll share his observations of how these dynamics affect all of us today, outside the beltway looking in.

Date: Monday, January 25, 2010

Times: 5:30 - 6:15 p.m. - Registration and Social Time; 6:15 to 6:45 - Dinner; 6:45 to 7:45 - Program
Place: Westin San Diego; 400 West Broadway; Second Floor
1 Hour MCLE General Credit