

AER eNews

*An Occasional Electronic Newsletter from Alan E. Ramos
Actor and Attorney*

Vol. 1

Summer - 2015

No. 2

Still Living in L.A.!

By Alan E. Ramos

I have been living in Los Angeles for five months now and feel quite at home. In some ways, that is a surprise (given my former bias for Northern California), in other ways it is not a surprise. The people who I have met have made me feel at home and I have gotten use to the weather and the traffic (as much as anyone can get used to it). I am actively pursuing my new career (acting) and still keeping tabs on my most recent career (lawyering). If anyone out there needs local counsel or assistance with a project, let me know. I still plan to launch a new website at www.AlanERamos.com; however, I have pushed out the launch date until sometime in August. I will let you know when it goes live. If anyone is interested in following my acting career, such as it is, you can do so on IMDb.com; here is a link: http://www.imdb.com/name/nm7218597/?ref=fn_al_nm_1

Finally, I was speaking with a group of people recently and someone brought up the subject of vacation. It was then that I realized – why would need to “go” on vacation – I am on vacation. I hope that you enjoy this offering. This edition features a guest article from my colleague Robert Jacobs; if you have an article that you think would be of general interest, please send it to me.

About Now

By Alan E. Ramos

As I transition from my future former profession (as an attorney) to my new profession (as an actor), it is interesting to note common issues challenging both professions. One of the challenges common to both professions is the need to be present, in the moment, to be here -- NOW.

Some people think that acting is mostly learning lines and emoting on cue (he's crying real tears!), but it is more about being totally present – mind, body and emotion – and listening with all of your being. If you can achieve that state, you give yourself the ability to react to what is being said in an honest and natural way. Otherwise, you are simply saying words, just reading lines with a group of people.

Practicing law can offer numerous challenges; among which is keeping it interesting. When my daughter was 10-years old, I took her to court with me (case management conference). She sat with me for an hour and as we were leaving, she remarked that “That judge has a terrible job – listening to those lawyers.”

Defending a deposition can also be a challenging experience, particularly when opposing counsel has a difficult time actually forming a question. It can be one of the most boring experiences in life. The primary challenge comes from the obligation to concentrate and carefully listen to the questions (there are not many grounds on which you can base an objection, but you better get them on the record) and to the answers your client or the witness is giving (which could come back to bite you later). If you aren't present and concentrating, you won't even be aware of the malpractice that you are committing until it makes itself evident in court (or when a malpractice claim is made against you).

Life can be complicated. We need to consider the past and learn from our experiences; some of which we don't want to repeat and others that make the present more rewarding. We also need to consider the future (a life with no plan can be a mess, not to mention all the best vacation spots won't be available). How do we get present and still take care to respect the past and invest sufficient energy in the future? And maybe most importantly, what does this process look and feel like?

Now

The past is past -- an obvious statement. But consider that immediately after I write each of these words, they become part of my past, part of the millions of bits of information and memories that make up who I am. Consider that as you read each of these words, they become part of your past, part of the millions of bits of information and memories that make up who you are. The past is an important, vital part of who we are – we would be nothing without our past. But the past is immutable, unchangeable, it is suitable for pondering and learning from and it is important for some of those experiences to become parables assisting us in avoiding repetition; however, it is not a productive place in which to dwell for long.

The future is not yet here – another obvious statement. However, it is important to plan for the future or it may not be terribly productive. We must consider the future and determine what it is that we wish it to be. We need to recognize that we have the power to manifest our dreams by envisioning the future that we want. The future is unblemished by fault or error or recrimination. The future is bright or dark or any hue we conjure it to be. The future beckons us, entices us, enthrall us with its unsullied purity. It can be hopeful or frightening, energizing or debilitating. But, for all that it can be, it is the future and it is not NOW.

One great danger of spending too much time in the past and/or the future is the possibility of becoming a “Gonna-Do” – one who speaks of what s/he is “Gonna-do” and what s/he “Coulda done”). In the state of “Gonna-do”, seldom is anything actually ever done, as it is easier and less risky to luxuriate in spending the NOW in the “safer” past and future, where no action is ever required – where all that is required of one is to talk.

It is important to consider the past, we can learn from the past and we can savor moments of the past. We also need to consider the future. Without planning, the future could be bleak and unlivable. The key is to ration the energy of NOW and give to the past and the future only what is necessary. If we give the past and the future any more of our NOW than what is necessary, we have less time to be present, less time to be in the moment – less time to savor NOW – and, at its worst, we can rend the fabric of NOW.

Let us not forget those marvelous moments when NOW and the past intersect. Those moments when a smell, sound, taste (and often for me a song) brings us back to moments in the past where we can feel it as if it were now. This is our ability to experience the past NOW. Feel it, embrace it, experience it for it can be a truly wonderful (or sad, exciting, painful) moment. Indulge the moment but don't stay there too long, for if you tarry, it can become but a wallow in the past and deprive you of time you can be present – in your NOW.

Most importantly, what the past and the future are not: is NOW. NOW is this precise moment. NOW can be felt, it can be tasted, it can be experienced with as many of our senses as we can assemble. If we summon all of our being to experience NOW, we can feel the joy of NOW, we can experience the full sensual ecstasy of NOW, and we can share with others all that we have to share - NOW. We can bring all of our being, all of our knowledge, all of our senses to this moment and experience NOW.

So I encourage you to take the plunge – fully engage in NOW. Find richness in the beauty of NOW. Whatever it is that you do – holding a baby, watching a sunset, smelling a rose, touching the face of a loved one, or changing your life to follow your dreams. Do it with all of your being in NOW and you will feel the full experience of NOW. You will experience the baby's joy and its wonderment of discovery; the uniqueness and brilliance of "that" sunset; the unique smell, softness and sensuousness of "that" rose; the excitement and expression of love returned by "that" loved one; and, the exhilaration of pursuing your dreams. Invest wisely in NOW and create a richer past (which, after all, is made up of all of the moments of NOW) and which may ultimately create a vastly more rewarding and joyful future.

Whatever you do – be it writer, artist, actor, attorney, musician, mother, father, friend or any other endeavor you can imagine – it will only be enhanced by being here NOW. You and everyone that you touch will benefit from your immersion in NOW.

© 2015 Alan Emmerson Ramos

The New Client Intake Process (Part 1)

by Alan E. Ramos (This article originally ran in the AER eNews in the Summer of 2004)

In the first issue of the AER Law eNews we discussed the *Client From Hell (or thereabouts)* (“the CFHot”) and the problems and difficulties that typically result from the representation of such clients. In this issue (and the next) we will examine the first line of defense against these clients – the New Client Intake Process

The Attorney-Client Relationship

Many attorneys take pride in saying that their relationships with clients are personal. While the fiduciary aspect of the attorney-client relationship lends itself to a relationship that is personal in nature, it is important to note that the attorney-client relationship is first and foremost a business relationship. Were this not true, how many clients do you think we could find who would pay our hourly rate to spend time with us in the furtherance of a personal relationship. Certainly, the longer the client relationship lasts, the more personal it becomes. However, while the relationship becomes increasingly personal, it does not cease to be a business relationship.

The Initial Client Interview: The First Line of Defense against the CFHot

A critical aspect of the new attorney-client relationship is the initial client interview. The development of the facts to determine if the client’s case is viable should not be the only basis for the establishment of an attorney-client relationship. While the facts of the client’s underlying case are important, the client’s credibility, acceptance of his responsibility to provide accurate and timely information as requested by the attorney, and the client’s ability and willingness to pay his bills as they become due are equally important. (It is important to note that the only guarantee that an attorney has is that the client will not tell the attorney everything that the attorney needs to know about the client’s case.) All of this information can and should be obtained in the initial client interview. Conducted poorly, the attorney will come away from the initial client interview with little or no real knowledge about this client and may unwittingly establish a relationship with the CFHot.

The Importance of Listening - What does the client want (and need)?

In the film, *A Civil Action*, attorney Jan Schlichtmann (played by John Travolta) asked his prospective client what she wants from defendants Beatrice and W.R. Grace. She tells him that she wants an apology – that money is not important. The first thought that comes to mind is – How are you going to satisfy this client? (Not to mention – what is 33% of an apology worth?) The threshold problem in this case was that Mr. Schlichtmann was not listening to the client. Had he been listening he never would have taken the case (and we would have been denied a great book and passable movie).

As mentioned above, the attorney must find out not only what the case is about, but what the case means to the client. The attorney needs to ask the right questions (which will differ from practice group to practice group). Is the case about money, a desire for “justice” or an apology? Does the client want a remedy that can be obtained by the

attorney, or does she want something that may be unavailable from the judicial process? Does the client know what she needs? Etc.

That is not to say that an attorney should never represent a client with a difficult case or seek justice (or an apology) for a client. However, an attorney should only take such a case with his or her eyes open wide. The attorney must have a clear understanding of who the client is, what the client expects and what remedy the client wants and needs. In cases similar to the one detailed in *A Civil Action*, the client is likely refuse to accept a reasonable offer, unless an apology is part of the structured settlement. Unfortunately, money is much easier to obtain in a settlement than is an apology.

Listening is an art; an art that must be developed and constantly practiced if it is to be effective. Effective listening takes a great deal of discipline (at least for those of us to whom listening does not come easily). An attorney with poor listening skills will not be able to conduct a productive initial client interview. At the conclusion of the meeting, he will not have an understanding of the client's wants, needs and expectations. This will only lead to problems later on.

What will it cost and how much is it worth?

It is not unusual for a client to ask what the attorney two dangerous questions - What will this cost? How much is the case is worth? Most attorneys will reluctantly offer a range of probable costs and potential results. The client will remember two things - the lowest possible cost the attorney has mentioned and the highest possible recovery upon which the attorney has speculated. (Remember, here the attorney is depending on the listening skills of the client.) This problem will typically manifest itself in the form of an objection to the size of the billing, refusal to pay the outstanding fees and costs, and/or a malpractice complaint alleging that the attorney did not properly represent the client (primarily because the recovery was far short of what was "guaranteed"). The bottom-line in this situation is that the client's expectations will not be met, even if the attorney obtained the best possible result. A properly conducted initial client interview will provide the attorney with the information needed to avoid the majority of problem clients, wasteful cases, and, of course, the CFHot.

In Summary

A properly conducted initial client interview is an important first step in the establishment of a successful and mutually beneficial business relationship. A successful initial client interview will provide the attorney with sufficient information so that she will not only understand the facts of the new case, the expectations of the client, and the financial capacity of the client. Ideally, she should also have some indication of the challenges that this client will present (i.e. Does this client have a realistic view of her case? Are the results desired by this client achievable? Is there a close connection between what the client professes to want and what the client needs?). Attorneys need to invest time in the development of a list of appropriate questions to ask prospective clients. This investment of time will pay off handsomely by expanding the understanding we have of each new client and, more importantly, by helping us to avoid being engaged to represent the CFHot. *Next time we will discuss the tools used to evaluate new clients to properly establish the client relationship.*

Law Advises Landowners to Make Use of Property

By Robert B. Jacobs

When I was a youngster, my mother always told me “You can’t get something for nothing.” Mother, bless her heart, obviously didn’t own much real estate. What mother didn’t know is that almost all real estate—even the old family homestead—is at risk from what is known as a “prescriptive easement.” The policy of the law is to favor the actual use of real estate. The law, in proper situations, also favors certainty in the use of real estate. What all this means is that in real estate, owners must either “use it or lose it.” And for non-owners, the policy can be “use it—and get it.”

An owner, who doesn’t use real estate for five years, may lose ownership if a stranger occupies the property for those five years and pays the taxes on it. This principle is known as “adverse possession.” If the owner pays the taxes each year, then he or she can’t lose ownership of the property.

However, if someone else uses the property, that person may gain a “prescriptive easement.” This “easement” is an actual ownership interest in the property. It doesn’t exclude the owner, which means the owner can continue using the property. But if the occupant gets an easement, then the occupant has a legal right to continue using the property. The owner may not be able to exclude the occupant or stop him or her from using the property.

The process for obtaining a prescriptive easement is similar to the process for obtaining title to property through adverse possession. However, an occupant need not pay taxes to get a prescriptive easement unless the easement has taxes separately assessed.

In order to get a prescriptive easement, an occupant must occupy the property for five years. The occupant doesn’t have to live on the property or stay on it. Even driving over a road when needed may be sufficient as long as the owner doesn’t give permission and as long as the use is sufficiently open that the owner can observe it. After five years of such use, the occupant, or user, holds an “easement by prescription.” This easement isn’t ownership, but it is a right to use the property.

Obtaining a prescriptive easement might look appealing. But persons who unlawfully and without permission enter property belonging to someone else can be guilty of a trespass. As a result, the obtaining of a prescriptive easement can in some cases result in potential trespass problems.

To protect themselves from potential claims of easement, owners can post signs at each entrance to their property and at certain intervals along the boundary. These signs say “Right to pass by permission, and subject to control, of owner: Section 1008, Civil Code.” When done properly, these signs can prevent users or occupants from gaining an easement in the property. However, property owners do well to seek professional

legal counsel before placing such signs, because the law contains specific requirements for such signs to be effective.

Issues and situations involving easements and adverse possession can be technical. The length of this article doesn't allow it to provide all of the relevant detail concerning easements and adverse possession. Persons with issues, or potential issues, concerning easements or adverse possession should consult competent legal counsel – without delay.

Robert B Jacobs practices real estate, business, bankruptcy and foreclosure law in the Bay Area. The foregoing article is not a complete discussion of the subject address, and should not be relied on. Readers with specific questions or issues should consult an attorney.

Dots New...

There is a recent set of commercials for Chevrolet that trumpets the fact that the people appearing in the commercial are “Real People – Not Actors”. Big shock to me; I thought I was still a real person. I didn't realize that I gave that up to become an actor... Congratulations to colleague Rene Lastreto on being appointed to the bankruptcy bench in the Eastern District of California. He will be located in Fresno (I directed Judge Lastreto in a very forgettable CBF film (does this mean he might be a Chief Judge in the future: only time will tell)...And what's up with Donald T..., I'm sorry I just can't type that name and I expect that you don't want to read it...Robert Kraft, owner of the Patriots (speaking about the penalty assessed to Tom Brady) “...if you want to get a deal done, sometimes you need to get the lawyers out of the room...”; or, maybe you just need to find other lawyers – just sayin'...

The View from Murray's World

The following news, views, comments and/or opinions are from the mind of Murray Richards, formerly the anchor of the award-winning news team on the now-defunct Bankruptcy Television Network. Murray's views and opinions are those of the author alone, considering that they are not shared by many, if any, other living human being.

Murray's musings:

- How about a new riding sharing service called Goober (think Gomer's friend and old pick-up trucks with lots of room for luggage and extra riders).
- Maybe the presidential primary season could be settled by a demolition derby or a pie fight (great optics).

Murray also claims that the following are his thoughts; however, that is highly doubtful. Most likely, this was a submission by one of his fans (or detractors, as the case may be). Enjoy the following at your own risk:

MY TRAVEL PLANS FOR 2015

I have been in many places, but I've never been in Kahoots. Apparently, you can't go alone. You have to be in Kahoots with someone.

I've also never been in Cognito. I hear no one recognizes you there.

I have, however, been in Sane. They don't have an airport; you have to be driven there. I have made several trips there, thanks to my friends, family and work.

I would like to go to Conclusions, but you have to jump, and I'm not too much on physical activity anymore.

I have also been in Doubt. That is a sad place to go, and I try not to visit there too often.

I've been in Flexible, but only when it was very important to stand firm.

Sometimes I'm in Capable, and I go there more often as I'm getting older.

One of my favorite places to be is in Suspense! It really gets the adrenaline flowing and pumps up the old heart! At my age I need all the stimuli I can get!

I may have been in Continent, but I don't remember what country I was in. It's an age thing. They tell me it is very wet and damp there.

From one unstable person to another. I hope everyone is happy in your head - we're all doing pretty well in mine.

Great Mediation Training: An Unsolicited Endorsement

By Alan E. Ramos

I am a firm believer in mediation – to my mind, mediation is more effective (both time and cost) than litigation or arbitration. If you are looking for a mediator, I would appreciate it if you would consider recommending me as a neutral. If you have an interest in becoming a mediator, or you need follow-up training, and you are looking for an excellent source for your training, I strongly recommend Steve Rosenberg. His mediation training program is excellent. His next Mediation Training will be presented in Corte Madera on October 7-9 & 14-16, 2015. For more information about this program (and his advanced mediation training), click on the link below:

http://www.mediate.com/rosenbergmediation/docs/mediation_training.pdf and click on the “register now” icon.

Upcoming Events*

Commercial Law League – Western Region Conference – September 10-11 – Universal City, CA
– 2015 Fall Conference – November 12-14, New York City, NY

California State Bar – Annual Meeting – October 8 – 11 – Anaheim, CA

Conference of California Bar Associations – Annual Conference – October 9 - 11 – Anaheim, CA

California Bankruptcy Forum – 28th Annual Insolvency Conference – May 19-21, 2016 – Indian Wells, CA

* This is a listing of upcoming events for organizations to which I belong and/or support (and some I don't). For more information on any of these programs, send an email to: aramos@aerlaw.com

ALAN E. RAMOS, ESQ.

Disclaimers:

*This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher is not providing the information contained herein as legal, accounting, financial or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought. This publication, or any art herein, may not be reprinted, published or distributed without the prior express written permission of Alan E. Ramos. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 became law in October of 2005. In addition to bearing an Orwellian title, the Act requires that any attorney who provides bankruptcy counseling to individuals (defined as assisted persons), must advertise themselves as Debt Relief Agencies. Consequently, Congress has decreed that I must advertise myself as a **Debt Relief Agency**. Accordingly, I provide the following notice: **From time to time I proudly offer to provide services to consumers (including creditors) in need of bankruptcy counsel. (So there.)***

Unsubscribe

You have been sent this electronic newsletter because your contact information inhabits the contact files of Alan E. Ramos. If you wish to unsubscribe, please send an email to aramos@aerlaw.com and type "Unsubscribe" in the subject line. *The AER eNews is published by Alan E. Ramos. In the event that you have questions regarding the content of this publication, please contact Alan E. Ramos at the address indicated below.*

Alan E. Ramos
357 S. Fairfax Ave., #293
Los Angeles, CA 90036

Email: aramos@aerlaw.com
Telephone: 213-841-1466

© 2015 – Alan E. Ramos