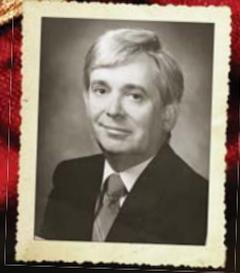


# VALLEY LAWYER

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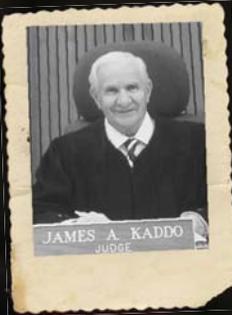
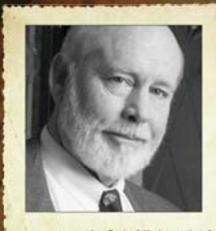


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## A Greater Sense of Purpose

**A**S I SIT DOWN TO WRITE this month's message, Northern California is burning. Governor Brown has just declared a state of emergency as multiple fires ravage Sonoma and Napa Counties, forcing widespread evacuations across wine country and destroying tens of thousands of acres.

Similar fires swept the state over the summer and we've witnessed unprecedented, unrelenting and destructive hurricane activity in the Southeast. And earlier in the year, record rainfall caused dire problems in California and elsewhere.

One of the aspects of all these disasters that strikes me most is how ready and willing friends, neighbors, and emergency personnel are to reach out and help disaster victims in every way possible. Religion, politics, culture, socioeconomic status...all those things melt away when events bring people together for a common purpose. And that's the point of my message.

For the most part, humans are programmed to help one another. It's a species-survival thing I'm sure, and that genetic drive enables us to transcend our differences. But we shouldn't wait for disasters to bring out the best in us. The challenge we face daily is to focus more of our energy on our similarities and those things that bring us together, rather than the things that divide us.

In small, but no less significant ways, that's what community and professional organizations do. We find common purpose and work

**ALAN E. KASSAN**  
SFVBA President



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together to achieve the objectives that rise from that purpose. In my years of involvement at the SFVBA and other organizations, I have had many opportunities to work on committees, events and projects with people who I know see the world differently than I do—people with much different backgrounds and perspectives than my own. But we always were able to work together. And we always came away from those activities with a higher level of respect for, and understanding of, differing thoughts and opinions.

So, once again, I appeal to you to get involved in our community. Of course, I speak of the SFVBA and all of our sections, committees, projects and charitable events. But my message extends beyond just the SFVBA. There are so many organizations that need our time, creativity, and resources; yet people are too often reluctant to jump in and help. Sure, some of that comes from work and family constraints, but we all have extra time. As it turns out, though, when we volunteer time, we end up managing our personal time so much better, and come away with a greater sense of purpose.

Win, win...jump in, and your genetic imperative will be well-served.

I would be remiss not to mention that our Attorney Referral Service recently made a \$5,000 donation to help communities hurt by Hurricanes Harvey, Irma and Maria. Our Board of Trustees and ARS Committee believed it was incumbent on us to help those in dire need. 



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# Remembrances of Things Past

**M**Y HITCH IN THE U.S. COAST Guard was staggeringly uneventful. I had enlisted with my sights set on Officer's Candidate School (OCS) and had, as a step in that direction, opted to strike for a sea-going rate as a Quartermaster.

Things turned out differently in a big way when some bright light in personnel discovered that I'd recently acquired a degree in journalism and, thus, was better suited to write press releases and take photographs "of Coast Guard personnel and activities of all descriptions." No OCS for me.

Based out of the 12<sup>th</sup> District headquarters in Alameda, California, I went where I was sent and did what was required, skyrocketing to the lofty and exalted rank of Petty Officer 3<sup>rd</sup> Class.

Like I said, staggeringly uneventful and not very much to be proud of, compared to so many others—others like the veterans I am most familiar with, my father, my son and my wife's father.

At the end of World War II, my dad, drafted six weeks after marrying my mom and who'd served as a medic in Europe, returned home with a stutter and a head full of memories he spent the rest of his life trying to forget; my eldest son, just recently promoted to Master Sergeant in the U.S. Marine Corps, who's seen active service over the past 18 years in Japan, Korea, Australia, Jordan, Afghanistan and several other places he's not at liberty to disclose; and my father-in-law, who, at 16, lied about his age to enlist in the Marines in 1944. Twenty-four years later, he retired having seen more than his share of action in World War II, Korea, Lebanon, and Vietnam.

**MICHAEL D. WHITE**  
SFVBA Editor



[michael@sfvba.org](mailto:michael@sfvba.org)

In conducting the interviews for this month's cover article, I was struck by a golden thread that connected every one of the people I talked with—a feeling of quiet pride having answered an unspoken call and at having served honorably, no matter where or how.

Some saw combat in strange-sounding places with faraway names; others did duty during the so-called Cold War; some suffered wounds, physical and emotional; and some served afloat, in the air or on land. No matter, all did their duty.

I would like to dedicate this work, not only to those that responded to our

call for interviews, but to those who didn't for what are deep, personal reasons. As one put it, "I didn't do anything really. It's all about those I left behind."



Finally, much deserved recognition is also due to our graphic designer, Marina Senderov, who, in younger days, spent two years in the Israeli Defense Forces (IDF). 

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			<p><i>Valley Lawyer</i> Member Bulletin Deadline to submit announcements to editor@sfvba.org for December issue.</p> <p><b>1</b></p>	<p>Membership &amp; Marketing Committee <b>6:00 PM</b> SFVBA OFFICES</p> <p><b>2</b></p>	<b>3</b>	<b>4</b>			
<b>5</b>	 <p><b>5:30 PM</b> CHABLIS RESTAURANT TARZANA</p> <p><b>6</b></p>	<b>7</b>	<p>Workers' Compensation Section Mastering Opinion Evidence: Balancing Substantiality with the Duty to Develop the Record <b>12:00 NOON</b> MONTEREY AT ENCINO RESTAURANT</p> <p><b>15</b></p>	<b>8</b>	<p>VETERANS DAY</p> 	<b>9</b>	<b>10</b>	<b>11</b>	
<b>12</b>	<b>13</b>	<p>Probate &amp; Estate Planning Section Family Business, Business Succession and Estate Planning Techniques <b>12:00 NOON</b> MONTEREY AT ENCINO RESTAURANT</p> <p>Kira Masteller and John Marshall will discuss how to best plan for business succession when dealing with families. (1 MCLE Hour)</p> <p>Board of Trustees <b>6:00 PM</b> SFVBA OFFICES</p>	<p>As the great philosopher Plato once said, "Opinion is the medium between knowledge and ignorance." From medical opinions to vocational evidence, from supplemental reports to depos, Judge Clint Feddersen will provide easy-to-understand paradigms for obtaining substantial opinion evidence. (1 MCLE Hour)</p>	<b>16</b>	<b>17</b>	<b>18</b>			
<b>19</b>	<p>Family Law Section Hot Tips <b>5:30 PM</b> MONTEREY AT ENCINO RESTAURANT</p> <p>Gary Weyman and the family law Bench officers present this annual update, a must attend for all family law attorneys. Evening includes a special tribute to beloved Section member Sandi Davisson. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)</p>	<b>20</b>	<p>Taxation Law Section Tax Ramifications of Foreign Investment in the United States <b>12:00 NOON</b> SFVBA OFFICE</p> <p>Venable tax attorney Bryan Kelly will present a primer on the income tax and FIRTA ramifications of foreign investments in U.S. real estate. This luncheon is a must attend to all real estate professionals who advise foreign nationals contemplating investing in U.S. real estate. (1 MCLE Hour)</p> <p>ARS Committee <b>6:00 PM</b> SFVBA OFFICES</p>	<b>21</b>	<p><b>HAPPY THANKSGIVING</b></p> 	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>
<b>26</b>	<b>27</b>	<p>Editorial Committee <b>12:00 NOON</b> TONY ROMA'S ENCINO</p> <p><b>28</b></p>	<div style="border: 2px solid #00AEEF; padding: 10px;"> <p><b>SAVE THE DATE</b></p>  <p><b>SFVBA</b> <b>21<sup>st</sup> Annual</b> <b>MCLE Marathon</b></p> <p><b>January 12 and 13, 2018</b> <b>Braemar Country Club</b></p> <p>Earn all your participatory credits, including specialized credits.</p> </div>						

SUN	MON	TUE	WED	THU	FRI	SAT
					<p><i>Valley Lawyer</i> Member Bulletin Deadline to submit announcements to editor@sfvba.org for January issue.</p> <p><b>1</b></p>	<b>2</b>
<b>3</b>	 <p><b>4</b> <b>VBN</b> VALLEY BAR NETWORK</p> <p><b>5:30 PM</b> <b>CHABLIS RESTAURANT TARZANA</b></p> <p>VBN is dedicated to offering organized, high quality networking for SFVBA members.</p>	<b>5</b>	<b>6</b>	<p><b>7</b> Membership &amp; Marketing Committee <b>6:00 PM</b> SFVBA OFFICES</p>	<p><b>8</b> Bankruptcy Law Section Recent BAP Opinions <b>12:00 NOON</b> SFVBA OFFICES</p> <p>Yi Sun Kim will lead the panel on the most relevant BAP opinions all bankruptcy attorneys should know. (1.25 MCLE Hours)</p>	<b>9</b>
<b>10</b>	<b>11</b>	<p>Retired Judges James Steele and Reva Goetz will discuss what it takes and what you need to know to be successful in mediation and to ensure your client ends up without a settlement! (1 MCLE Hour)</p>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
<b>17</b>	<b>18</b>	<p><i>Holiday Open House</i></p> <p><b>December 12, 2017</b> 5:30 p.m. to 7:30 p.m. SFVBA Offices</p>				
<b>24</b>	 <p><b>25</b></p>	<p>Bring an unwrapped new toy or giftcard to benefit the children of Haven Hills and West Valley Food Pantry.</p> <p>RSVP to 818.227.0490, ext. 2105 or events@sfvba.org.</p>				
<b>31</b>		<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>

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- David L. Fleck, Esq.



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## Meet Member Services Coordinator Sonia Bernal

**WOULD LIKE TO INTRODUCE YOU** to our new Member Services Coordinator and Mandatory Fee Arbitration Program Administrator, Sonia Bernal.

Sonia was born and raised in the San Fernando Valley. She graduated from Cleveland High School and then went on to earn a degree in Political Science from the University of California Riverside in 2015. Sonia is among the first in her family to graduate from college and hopes to further her education in the future.

Sonia was involved in several service based organizations during her time at UC Riverside; these organizations focused on coordinating different events such as preparing sandwiches for the homeless and providing homework assistance to the students in the community. During her senior year, she worked as a peer mentor to help guide students from similar backgrounds and provide them with resources to make the transition from high to college easier. Sonia also worked as an intern at a legal aid clinic in Riverside County, conducting client interviews and connecting them with legal resources.

After Sonia graduated from college, she worked with an AmeriCorps program called City Year Los Angeles. This organization focused on providing targeted academic, social and emotional support to students from low-income communities in downtown Los Angeles. Sonia stayed with the organization for two years when most only stayed for a maximum of one year.

"The main reason why I decided to complete two terms of service was because I wanted to do my part to help

the students gain more confidence in their abilities and to encourage them to keep doing their best despite what difficulties come their way," explains Bernal. "It was a challenging process but overall it was worthwhile, especially when



I saw my students improve their reading and math level. Many of these students had difficulties reading and writing because they came from predominantly Spanish speaking households. This made it difficult for many of the students to practice their English skills at home."

**ELIZABETH POST**  
Executive Director



[epost@sfvba.org](mailto:epost@sfvba.org)

"My time with my students and the organization as a whole taught me that hard work and dedication will pay off," Sonia continues. "After completing my two years of service, I worked as an intern in an investment firm. This organization focused on investing in companies that were making strides towards a positive environmental impact. I helped conduct research on the renewable energy and governmental policies in different counties. I enjoyed learning about the different environmental polices and how different countries develop their own plans to address the challenges they face."

In her spare time Sonia likes to explore different hiking trails around the Los Angeles and Riverside Counties. She enjoys playing volleyball and spending time with her family. "I look forward to continuing my career in public service with the San Fernando Valley Bar Association as the Member Services Coordinator and Mandatory Fee Arbitration Program Administrator." 



**VBN**  
VALLEY BAR NETWORK

Join the Valley Bar Network the first Monday of each month.

Contact [events@sfvba.org](mailto:events@sfvba.org) for more information.



By reading this article and answering the accompanying test questions, you can earn one MCLE credit in Legal Ethics. To apply for the credit, please follow the instructions on the test answer form on page 21.

By Katherine L. Wallman

# Social Media and Common Ethical Problems





Social media transverses old barriers such as time and distance, giving attorneys unprecedented opportunities to market their practice to potential clients on a scale never seen before. Although the advantages of social media and the digital age are vast, the ever-changing cyber world raises ethical questions attorneys must address before reaping its benefits.

**L**INKEDIN, AVVO, FACEBOOK, TWITTER—THESE are just a few of the many social networking websites in today’s digital world providing professionals with a variety of new avenues for communication, networking and marketing.

Today, attorneys have the unprecedented ability to grow their presence in the legal field and make a name for themselves in the blogosphere, as well as market their practice to potential clients. Social media transverses old barriers such as time and distance and allows new relationships to be built and fostered, all through cyberspace.

Although the advantages of social medial and the digital age are seemingly limitless, functioning in that world comes complete with a minefield of hazards for unprepared attorneys. The ever-changing digital world raises ethical questions attorneys must address before reaping its benefits.

For example, how can an attorney make sure her websites and blog posts comply with her state’s advertising requirements? How can an attorney monitor his online presence so he does not disclose privileged client information? How can an attorney avoid the unauthorized practice of law when blog posts are sent across the world? Or, how can an attorney avoid inadvertent attorney-client relationships when she answers postings in online chat groups?

### Legal Advertising

The California State Bar’s Standing Committee on Professional Responsibility and Conduct issued a formal ethics opinion with guidelines and ethical restrictions on California attorneys when using social media advertising.<sup>1</sup> The opinion states that Facebook and other social media advertising is subject to the same California Bar Rules as traditional advertising and that those rules prohibit both false and misleading advertising.<sup>2</sup>

In California, “material posted by an attorney on a social media website will be subject to professional responsibility rules and standards governing attorney advertising if that material constitutes a ‘communication’ within the meaning of Rule 1-400 (Advertising and Solicitation) of the Rules of Professional Conduct of the State Bar of California.”<sup>3</sup>

The State Bar found that a communication is “any message or offer made by or on behalf of a member concerning the availability for professional employment of

a member or a law firm directed to any former, present or prospective client.”<sup>4</sup>

It also found that a “communication or solicitation shall not contain any untrue statement; or contain any matter, or present or arrange any matter in a manner or format which is false, deceptive or which tends to confuse, deceive, or mislead the public; or omit to state any fact necessary to make the statements made, in the light of circumstances under which they are made, nor misleading to the public; or fail to indicate clearly, expressly, or by context, that it is a communication or solicitation as the case may be; or be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats or vexatious or harassing conduct.”<sup>5</sup>

The Bar went on to examine several hypothetical online postings:

- 1 “Case finally over. Unanimous verdict! Celebrating tonight.”
- 2 “Another great victory in court today! My client is delighted. Who wants to be next?”
- 3 “Won a million dollar verdict! Tell your friends and check out my website.”
- 4 “Won another personal injury case! Call me for a free consultation.”
- 5 “Just published an article on wage and hour breaks. Let me know if you would like a copy.”<sup>6</sup>

In its opinion, the Bar found that examples 1 and 5 were not communications under Rule 1-400(a) because they did not contain a message or offer “concerning the availability for professional employment.”<sup>7</sup> Therefore, those postings were not advertising and did not have to comply with the standards of Rule 1-400(E).

Examples 2, 3, and 4, however, contained explicit language suggesting the availability for professional employment, with the Bar finding those posts were communications, subject to Rule 1-400’s standards for attorney advertising.<sup>8</sup>

The Bar also found several problems with examples 2, 3 and 4 under California’s rules for attorney advertising. Example 1, it said, violates the restrictions on client testimonials. A California attorney cannot publish “communications” that contain testimonials that attorney

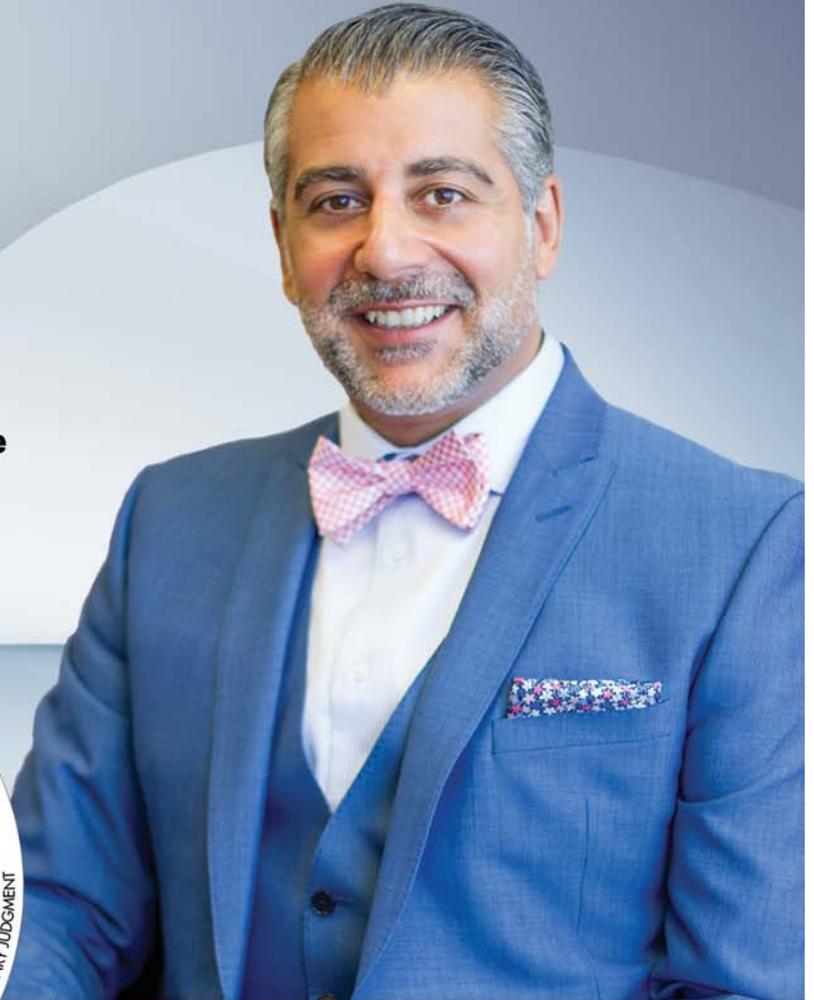


**Katherine L. Wallman** is a corporate and franchise attorney at Lewitt Hackman in Encino. She can be reached at [kwallman@lewitthackman.com](mailto:kwallman@lewitthackman.com).

# Mitchell M. Tarighati, Esq.

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unless the communication also contains an express disclaimer.<sup>9</sup>

All three examples, it concluded, fail to explicitly state that they are advertisements.<sup>10</sup> Finally, example 2 offers an improper guarantee or prediction of winning.<sup>11</sup>

California attorneys should be aware of the advertising rules when posting anything online. If an attorney's post meets the definition of a communication, the attorney must comply with California's rules regarding advertising. For example, Business and Professions Code section 6157.1 prohibits any "false, misleading or deceptive statement" in an advertisement, while section 6157.2 prohibits including in an advertisement any "guarantee or warranty regarding the outcome of a legal matter."<sup>12</sup>

Rule 1-400 of the California Rules of Professional Conduct provides even more detailed requirements. Rule 1-400(D) provides rules that must be followed to ensure that a communication is not false or misleading, or made in a coercive manner.<sup>13</sup> Rule 1-400 provides a list of "Standards" with examples of communications which are presumed to violate Rule 1-400.<sup>14</sup>

### Confidential Information

One of an attorney's most sacrosanct duties to a client is confidentiality. The ease of sharing information through social media, and the inherent informality of social media websites, however, raises a danger that attorneys might breach that professional duty. Disclosure of confidential client information can occur in variety ways, as websites, blog posts, LinkedIn status updates, Facebook status updates and tweets all allow for the instant publication and dissemination of what could well be privileged information.

The informal setting of a social media website does not excuse an attorney's improper disclosure of confidential information. Further, understanding how these websites work to assess their security is critical for monitoring ethical compliance. The State Bar has stated that if an attorney "lacks the necessary competence to assess the security of the technology, he or she must seek additional information or consulted with someone who possesses the necessary knowledge."<sup>15</sup>

California's broad duty of confidentiality is found in §6068(e)(1) of the Business and Professions Code, and in California Rule of Professional Conduct 3-100, which requires California attorneys to "maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."<sup>16</sup> The sole exception is that a California attorney may reveal confidential information relating to the representation of a client to prevent a criminal act likely to result in death or substantial bodily harm.<sup>17</sup>

In addition to not intentionally disclosing confidential client information, a lawyer's duty of competence under

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California Rule 3-110 requires the attorney to take reasonable precautions to safeguard against unintended disclosure.<sup>18</sup>

The Los Angeles County Bar Association (LACBA) Professional and Ethics Committee recently published an opinion discussing the ethical risks in social media.<sup>19</sup>

LACBA noted that online communications present particular risks for attorneys and the protection of confidential client information.<sup>20</sup> The Bar Association discussed an example of an attorney at a conference with a client,<sup>21</sup> during which the client revealed facts that were detrimental to the client or the client's case.

After the conference, the attorney disclosed those facts online when discussing a "client" whose name the attorney did not reveal. LACBA noted that although the attorney might believe the facts could not be associated with the particular client, it is possible that an opposing party or third person might be able to infer the client's identity from the context of the disclosure.<sup>22</sup> It also found that the disclosure by the attorney would likely not constitute a waiver of the privilege, and that the opposing party would be able to use the underlying facts disclosed during the attorney-client communication to the client's detriment or embarrassment.<sup>23</sup>

Attorneys should always protect client information diligently and carefully. Posting seemingly casual information about an attorney's day or meeting with a client may have greater consequences than an attorney can imagine. Further, attorneys should be aware that the duty of confidentiality does not end with termination of a professional relationship and that it may be applied even when the facts are already part of the public record.<sup>24</sup>

An attorney must always comply with the duties regarding confidential client information and an attorney's online postings or other activities do nothing to negate that responsibility.

Ultimately, using client information in any social media communication is something best done sparingly and with extreme caution.

### Unauthorized Practice of Law

A basic tenet of legal practice is that attorneys can practice law only in jurisdictions where they are licensed, with a few exceptions. Social media, however, knows no geographic boundaries as anyone, anywhere with access to the internet can access an attorney blog or website. While this ease of access is one of the most powerful benefits of the internet and social media, it poses ethical problems regarding the unauthorized practice of law, which in California, is not only a disciplinary violation, it is a misdemeanor.<sup>25</sup> Physical presence in the non-licensed jurisdiction is not required to trigger a violation.<sup>26</sup>

Facebook comments, interactive Tweets, and blogs that offer the opportunity to comment are examples of situations

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where attorneys might find themselves interacting with non-lawyers, and thus, inadvertently and unethically providing legal advice to someone who does not live in the state where the attorney is licensed to practice law.

California has recommended its attorneys take the following steps on their websites to avoid any confusion that they are advertising in other jurisdictions: “1) an explanation of where the attorney is licensed to practice law, 2) a description of where the attorney maintains law offices and actually practices law, 3) an explanation of any limitation on the courts in which the attorney is willing to appear, and 4) a statement that the attorney does not seek to represent anyone based solely on a visit to the attorney’s website.”<sup>27</sup>

When posting online, attorneys should be cautious not to answer specific legal questions and should instead focus on providing more generalized information to the general public.<sup>28</sup> Attorneys can also turn off comments on a posting or choose not to respond to a comment. These techniques can help prevent interactive communications that could lead to an attorney-client relationship.

### Inadvertent Attorney-Client Relationships

Attorneys should be aware that there is a risk of inadvertently forming attorney-client relationships through online activity.

The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion 2003-161 examined under what circumstances a communication, made in a non-office setting by a person seeking legal advice, may be entitled to protection as a confidential communication when the attorney makes no agreement of confidentiality and does not accept the case.

The Bar concluded that the communication may be entitled to protection under two circumstances: first, “if an attorney-client relationship is created by the contact” or, second, “even if no attorney-client relationship is formed, the attorney’s words or actions induce in the speaker a reasonable belief that the speaker is consulting the attorney, in confidence, in his professional capacity to retain the attorney or to obtain legal services or advice.”<sup>29</sup>

To avoid creating an inadvertent attorney-client relationship, attorneys must consider whether the information they post on their social media websites would create the reasonable belief by a visitor that they are consulting an attorney in order to obtain legal advice or services. In such a case, it is an attorney’s responsibility to make clear to the website visitor that an attorney-client relationship either has or has not been created.<sup>30</sup>

When using social media, attorneys should speak in generalized terms and also post explicit disclaimers that any interaction does not form an attorney-client relationship.<sup>31</sup> This is in order to inform the user and ultimately rebut any reasonable belief that one exists.<sup>32</sup>

Disclaimers are not bullet-proof, but it is far better to have one than not have one at all.

### Be Aware

Attorneys should be aware that they could inadvertently create an attorney-client relationship, and if they provide legal advice in a jurisdiction in which they are not licensed, they could be engaging in the unauthorized practice of law.

The introduction of social media to the practice of law provides attorneys with increased opportunities to market their services and advance their professional personas. However, attorneys must be mindful that technological advances also provide new risks of ethical mishaps. Attorneys must be aware of the existing ethical obligations and apply these obligations to the new situations that may arise from advances in social media. 

<sup>1</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2012-186 (2012).

<sup>2</sup> *Id.*; see also Cal. Bus. & Prof. Code §§6157-6159.2; Cal. State Bar Rules of Prof’l Conduct (“Cal. Rules”) R. 1-4100(A).

<sup>3</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2012-186 (2012).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Cal. Rules R. 1-400(E).

<sup>10</sup> Cal. Rules R. 1-400(E), Std. 5.

<sup>11</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2012-186 (2012); Cal. Rules R. 1-400(E), Std. 1.; Cal. Bus. & Prof. Code §6157.2.

<sup>12</sup> Cal. Bus. & Prof. Code, §§6157.1 and 6157.2; see also Cal. Rules R. 1-400, Std. 1.4.

<sup>13</sup> Cal. Rules R. 1-400, Std. 1.4.

<sup>14</sup> *Id.*

<sup>15</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2010-179 (2010).

<sup>16</sup> Cal. Bus. & Prof. Code, §6068(e)(1); Cal. Rules R. 3-100.

<sup>17</sup> Cal. Bus. & Prof. Code, §6068(e)(2); Cal. Rules R. 3-100.

<sup>18</sup> See Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2010-179 (2010) (“An attorney’s duties of confidentiality and competence require the attorney to take appropriate steps to ensure that his or her use of technology in conjunction with a client’s representation does not subject confidential client information to an undue risk of unauthorized disclosure”).

<sup>19</sup> L.A. County Bar Assoc. Prof’l Responsibility and Ethics Comm., Opinion No. 529 (August 2017).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See *Dixon v. State Bar* 32 Cal.3d 728 (1982) (suspending attorney from practice of law for five years for violating client confidentiality, among other violations, when attorney disclosed confidential information about a former client); *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811 (2011) (after termination of representation, “a lawyer must: ... (d) take no unfair advantage of a former client by abusing knowledge or trust acquired by means of the representation.” See *In re Johnson*, 4 Cal. State Bar Ct. Rptr. 179 (2000) (finding an attorney’s revelation in confidence that his client had served time for a felony conviction violated the duty of confidentiality because, even though the conviction was public record, it was not easily discovered).

<sup>25</sup> Cal. Rules R. 1-300 prohibits the unauthorized practice of law and aiding and abetting the unauthorized practice of law; Cal. Bus. & Prof. Code, §6126.

<sup>26</sup> See *In The Matter of Lenard*, 5 Cal. State Bar Ct. Rptr. 250 (2013) (physical presence is not the litmus test for identifying or establishing that a lawyer has committed unauthorized practice of law).

<sup>27</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2001-155 (2001).

<sup>28</sup> Julie Tappendorf, *Attorney Ethics and Social Media*, American Bar Assoc. (2015).

<sup>29</sup> Cal. Bar Comm. on Prof’l Responsibility & Conduct, Formal Op. 2003-161 (2003).

<sup>30</sup> Jessica Weltge and Myra McKenzie Harris, *The Minefield of Social Media and Legal Ethics: How to Provide Competent Representation and Avoid the Pitfalls of Modern Technology*, American Bar Assoc. (March 24, 2017).

<sup>31</sup> Michael E. Lackey Jr. & Joseph P. Mintz, *Attorneys and Social Media: The Legal Ethics of Tweeting, Facebooking and Blogging*, 28 *TOURO L. REV.* 149, 164.

<sup>32</sup> *Id.*



# Test No. 109

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour in Legal Ethics. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The California State Bar is silent on guidelines for California attorneys using social media.  
 True  False
2. Online attorney advertising is governed by the same California Bar Rules as traditional advertising.  
 True  False
3. A "communication" within the meaning of Rule 1-400 of the Rules of Professional Conduct of the State Bar of California contains a message or offer concerning the availability of professional employment.  
 True  False
4. A "communication" posted online by an attorney must comply with California's Rules of Professional Conduct for attorney advertising.  
 True  False
5. A "communication" containing client testimonials does not need to contain a disclaimer  
 True  False
6. A "communication" can contain a guarantee or prediction of winning.  
 True  False
7. A "communication" cannot contain false and misleading information.  
 True  False
8. An attorney who posts "Another great victory in court today! My client is delighted. Who wants to be next?" to her blog is not in violation of the California Rules of Professional Conduct.  
 True  False
9. There are four exceptions to California's duty of confidentiality under the California Business and Professions Code and in California's Rules of Professional Conduct.  
 True  False
10. A California attorney has a duty to take reasonable precautions to safeguard confidential client information against unintended disclosure.  
 True  False
11. Ignorance of technology is an excuse for the disclosure of confidential information.  
 True  False
12. An attorney's online post about their work day with information about a client but not the client's name can never breach the attorney's duty of confidentiality  
 True  False
13. The duty of confidentiality can be applied to facts that are already in the public record.  
 True  False
14. The duty of confidentiality ends at the termination of the professional relationship with the client.  
 True  False
15. An attorney must be physically present in the unlicensed jurisdiction to trigger a violation of the rule against unauthorized practice of law.  
 True  False
16. In California, the unauthorized practice of law is an ethical violation and a felony.  
 True  False
17. California recommends attorneys put disclaimers on their websites to avoid confusion that the attorney is advertising or practice law in another jurisdiction.  
 True  False
18. An attorney-client relationship can be created by an attorney's online interaction with a person.  
 True  False
19. Disclaimers are useful for attorneys to post in their online activities stating that any interaction does not form an attorney-client relationship.  
 True  False
20. It is the attorney's responsibility to make clear to the website visitor that an attorney-client relationship has or has not been created.  
 True  False

## MCLE Answer Sheet No. 109

### INSTRUCTIONS:

1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the \$20 testing fee for SFVBA members (or \$30 for non-SFVBA members) to:

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### ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

1.  True  False

2.  True  False

3.  True  False

4.  True  False

5.  True  False

6.  True  False

7.  True  False

8.  True  False

9.  True  False

10.  True  False

11.  True  False

12.  True  False

13.  True  False

14.  True  False

15.  True  False

16.  True  False

17.  True  False

18.  True  False

19.  True  False

20.  True  False

# HONORING OUR VETERANS OF WAR AND PEACE

By Michael D. White



**W**HEN OUR PERILS ARE PAST, SHALL OUR GRATITUDE SLEEP? THE ANSWER TO THIS OFT-QUOTED line penned many years ago by the British statesman George Canning is, of course, "No. Never."

In a fitting token of that gratitude, this edition of *Valley Lawyer* features a salute to the members of the San Fernando Valley Bar Association who served our nation's armed forces. Spotlighted are the reminiscences veterans of all the branches of the military that, in their own way, serve as a grateful acknowledgement of those who served and stood guard over our freedoms in both war and peace that's both well-deserved and hard-earned.

**JUSTICE ARMAND ARABIAN, RET.**  
*Army, 1956-1958*

A ROTC graduate of Boston University, Justice Arabian was commissioned a Second Lieutenant in the Army in 1956. Over the next two years, the future Associate Justice of the California Supreme Court went airborne, qualifying both as a paratrooper and as a Master Pathfinder at Ft. Benning, Georgia.

"I started Ranger School, but with less than a year to go before being separated, I only completed one-third of the training," he says.

During one of his fourteen jumps as a paratrooper, Arabian became entangled with another jumper. "Nobody got excited, neither of us pulled our reserve [parachute] and we both landed right near each other."

After leaving the Army, Arabian returned to Boston University, where he was named president of his law school graduating class. Moving to California, he passed the bar and began a distinguished career that culminated in his being named to the California Supreme Court in 1983.

"In the Army, I learned leadership and how to get along with people," says Arabian. "If you wanted to be a leader and had the ability, that was the place to learn to be one. It was very valuable to learn how to deal with difficulties and adapt to tough situations."



**ANTHONY C. BELLER**  
*Army, 1969-1971*  
*Army Reserve, 1971-1977*



Tony Beller participated in ROTC at UCLA and became an Army infantry company commander while on active duty from 1969 to 1971.

With the rank of Captain, he had three platoons under his command, but happily stayed stateside. "Being in the infantry we spent a lot of time in the field for tactical training," he says. "The war in Vietnam was cooling down but we took our training very seriously."

**ANDY BELTRAN**  
*Marine Corps, 2001-2005*

A first year attorney in solo practice, Andy Beltran served in the U.S. Marine Corps from 2001 to 2005. During his deployment to Iraq in support of Operation Iraqi Freedom, he was assigned to the 2nd Fleet Anti-terrorism Security Team, also known as the 2nd FAST Company.

While in Baghdad, he took advantage of an opportunity to take a break from his duties with a sit-down on Saddam Hussein's golden throne.

"After the Marine Corps, I worked on Department of Defense and Department of State contracts as a security contractor," he says. "I worked as a personal security specialist...and provided security for then Secretary of State, Hillary Clinton, and then Speaker of the House, Nancy Pelosi, while they were in Baghdad."



**Michael D. White** is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 35 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at [michael@sfvba.org](mailto:michael@sfvba.org).



**STEPHEN BIEGENZAHN**  
*Marine Corps, 1971-1978*

Commissioned in the U.S. Marine Corps in 1971, Stephen Biegenzahn was deferred from active duty until he graduated from law school. He passed the bar in 1974 and went on active duty the following January.

"I went to Naval Justice School in Newport Rhode Island and was ultimately stationed at Camp Pendleton," he says. "Assigned to JAG, I acted as a prosecutor and as a defense counsel. I was then assigned to an administrative billet where I provided legal advice to Marines and their spouses who had issues under California law. I took terminal leave late in 1978."

Biegenzahn has two aspects of his service which he remembers "vividly and fondly"—having the opportunity to play tackle football until he was 28, and the trial in which his client, a young black Marine from North Carolina, was charged with attempted murder following the group assault on what was thought to be a Ku Klux Klan cell on the base at Camp Pendleton.

"The case and its companions—seven or more—drew both Jesse Jackson and David Duke to Oceanside, California, as well as a fair amount of media attention," he recalls. "A good kid with an excellent record who made a mistake."

Thanks to the judicial process under the Uniform Code of Military Justice, says Biegenzahn, "We were able to keep him in the Corps, get him out of the brig, and six months later he was at North Carolina State, playing basketball on scholarship."



**RICK BITAR**  
*Marine Corps, 1989-1993*

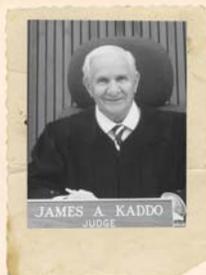
Paralegal Rick Bitar is an Operation Desert Storm/Gulf War veteran who enlisted in the Marine Corps in 1989. He underwent boot camp training at the Marine Corps Recruit Depot in San Diego, where he earned the highest M-16 rifle qualification training in his platoon, and nearly beat a drill sergeant who challenged him to an obstacle course race a week before graduation.

Following his graduation from boot camp, Bitar was assigned to Camp Lejeune, North Carolina, where he served as a Supply Administration & Operations Specialist in a Light Armored Infantry Battalion. His duties included the fiscal accounting and administration of his unit's inventory of weapons, Kevlar helmets, and other critical equipment.

Finding that accounting and making inventory adjustments sometimes got "boring," Bitar often volunteered to train with an infantry company and an elite Marine Recon unit while stationed at Camp Lejeune. There he learned to rappel from a helicopter, swim to shore while wearing full combat gear, and trained in other areas such as amphibious assault exercises that, he says, "provided physical challenges."



**KENNETH GREEN**  
*Army, 1957-1958*



**JUDGE JAMES A. KADDO**  
*Army, 1956-1958*  
*Army Reserve, 1958-1962*



**JULIAS STEWART**  
*Navy, 1983-1989*

**RONALD R. COHN**  
*Air National Guard,*  
 1970-1976

In the early 1970s, Ronald Cohn marched, almost literally, “down the street” to sign up with the California Air National Guard’s 147th Combat Communications Squadron, then based at Van Nuys Airport.

Basic training was “endured” at Lackland Air Force Base with Tech School at Shepard Air Force Base in Wichita Falls, Texas. “Hot and humid one day, then freezing cold the next,” Cohn recalls. “No trees, mountains or anything else, just rolling prairie. For some reason, some folks call it God’s Country. I think Hawaii might be, but Texas, no.”

The 147th, says Cohn, “was part of a statewide group that had the mission of remotely setting up communications equipment like radios and large generators for power. The idea was that we could provide communications ability for command authorities in any environment during a natural disaster or in the event of enemy attack that destroyed established systems.”

“Maybe the important thing about our service, and perhaps the service of the vast majority, is that we were an insurance policy for the country,” says Cohn. “Maybe we didn’t serve in any wars, but we were there as back-up had the need arose... our individual experiences were uneventful and unremarkable and maybe that was because we were there in the first place.”

After six years of service with the California Air National Guard, Cohn was honorably discharged with the rank of Sergeant (E4).



**JUDGE DONALD H. FOSTER, RET.**  
*Army Air Force,*  
 1943-1945

With four years of ROTC under his belt—three in the infantry and one in the horse cavalry at the Virginia Military Institute—retired judge Donald Foster learned to fly in the late 1930s at an airfield outside his native Peoria, Illinois.

“I was instructed on the Piper Cub and then went to Indianapolis and took every course I could at the Roscoe Turner Aeronautical Institute,” Foster recalls at age 96. “I learned aerobatics, night and instrument flying, cross country flying...the works.”

When the United States was drawn into World War II, Foster went to work for the government as a civilian contractor flight instructor. “I was much more valuable as an instructor than as a soldier,” he says. “They put me to work teaching glider pilots, Navy pilots and Army pilots, and I wound up flying planes all over the United States, Canada and Alaska. I delivered P-51 fighters, B-17 bombers and just about everything in between that could fly. It was very exciting, very enlightening.”

After two years working as a civilian, Foster joined the USAAF in Long Beach, California, went through officers training and received his wings as a Flight Officer after more training in Nashville, Tennessee. He was assigned to haul people and cargo in the U.S. and Canada and then between Oran, Algeria, in North Africa and Italy.

“There’s no question that my experience helped me to be a better lawyer and judge. The discipline and an understanding of the world; seeing how other people live. It was a great eye-opener and gave me a perspective I never would have had otherwise.”



## SIDNEY FRANKLIN

*Air Force Reserve, 1959-1965*



Sidney Franklin Enlisted in the U.S. Air Force Reserve in 1959, serving to 1965 as a medic. Trained at Lackland Air Force Base in Texas and Hamilton Field in Marin County, California, Franklin's unit was based at Fort Miley Hospital in San Francisco.

Additional training followed every summer at various bases in Utah, Illinois and other locations, he says. "Sometimes we wound up back in Texas, but most of my time was spent in the Bay Area."

Franklin was attending school at Cal Berkeley when he enlisted and had almost completed law school at Hastings School of Law when he was discharged with the rank of Airman 2c.

"I felt then and still have good feelings about the military," says Franklin. "It was pre-Vietnam when I enlisted and the anti-military environment at Berkeley hadn't yet gelled. It was a typical college then, with fraternities, guys in loafers and crewcuts, and girls in skirts. Things have changed."

## PAUL L. FREESE, JR.

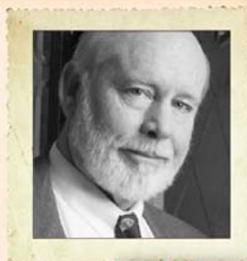
*Army, 1973-1976*

Paul Freese served in the U.S. Army from 1973 to 1976. After basic training at Fort Ord, California, he trained at Fort Gordon, Georgia, and assigned to the 165th Military Police Company in Fischbach, Germany.

He recalls being called a "wimp" for having to go to sick bay during training, only to be told by the doctor that he would have died from pneumonia in three days had he not reported that day.

Freese's father, prominent attorney Paul L. Freese, Sr., was also an Army veteran; 2nd Lieutenant Freese was awarded the Purple Heart for wounds received during the Korean War's Battle of Pork Chop Hill. "I was a rare upper middle class kid who volunteered and was stationed with draftees from poor farms, ghettos, blue collar communities, ranches and bayous—and I knew most of these guys would never move on to college," says Freese. "But, in short order, I discovered that if the situation required it, any one would lay down their life for me, and that was deeply humbling."

Freese received his honorable discharge as a Specialist 4. He currently serves as Director of Litigation & Advocacy with Neighborhood Legal Services of Los Angeles and is developing its Veterans Initiative.

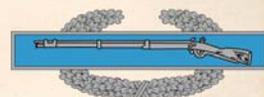


## ALBERT J. GHIRARDELLI

*Army, 1943-1945*



In May of 1943, at the end of his freshman year at UCLA, Albert Ghirardelli received his draft notice and was inducted into the U.S. Army.



"After several detours, I ended up with the 97th Infantry Division, as part of General Patton's 3rd Army," says Ghirardelli.

Originally trained for amphibious assaults in the Pacific, the 97th Infantry Division was, instead, deployed to Europe because of the heavy casualties incurred during the Battle of the Bulge in December 1944. On April 7, 1945, the division was assigned to clear out the heavily defended Ruhr Pocket, located just east of the Rhine River. In that bitter and costly engagement, Ghirardelli was seriously wounded when a German rifle shot tore through his upper jaw.

"After five months of medical work on my jaw, and with the war over, I was discharged in November 1945, with the award of the Bronze Star, the Purple Heart, and the Combat Infantryman Badge."

Now retired from his legal practice, Ghirardelli has been a member of the Valley Bar since the early 1950s and served as the Bar's President in 1957.



## D. WAYNE JEFFRIES

*Navy, 1968-1970; Naval Reserve, 1970-1974*

Attorney Wayne Jeffries served a six-year stretch in the US Navy from August 1968 through August 1974. Commissioned an Ensign after graduating from UCLA, he spent two years aboard the destroyer U.S.S. Charles P. Cecil, DD 835, first as the ship's Electronics Maintenance Officer and then as the Combat Information Center Officer for the remainder of his tour.

"We went on an overseas cruise to the Indian Ocean for six and a half months in 1969 and visited ports in Africa and India," he says. "At that time the fleet in the Indian Ocean consisted of two destroyers. We were sent so that the United States had a presence in that ocean as a counter to the Soviet Union."

During the cruise, Jeffries qualified as "Officer of the Deck, Independent" and was promoted to Lieutenant (Junior Grade) and recalls a port call in Trincomalee, Ceylon [now Sri Lanka], with people visiting the ship "to look at the moon" during the Apollo 11 moon landing.

Following his two years of active duty, Jeffries served an additional four years in the U.S. Naval Reserve.



## MAURICE LEWITT

*Army, 1954-1956*

Maurice Lewitt was drafted into the U.S. Army in 1954 after graduating from Ohio State Law School and passing the Ohio bar.

After basic training at Ft. Knox, Kentucky, he spent some time guarding the country's gold reserves there. Because he had previously earned a bachelor's degree in accounting at Kent State University, Lewitt was later assigned for two years to the Army Audit Agency, which was then located in Los Angeles. He was a Specialist, Third Class.

While assigned to the Audit Agency, Lewitt audited Army costs at bases in the western United States, such as Ft. Huachuca in Arizona and Fort MacArthur in San Pedro, as well as various government industrial contracts. He loved California so much he decided to stay and passed the California bar in 1956.



## RICHARD A. LEWIS

*National Guard, 1964-1968*

*Army, 1968-1969*

*Army Reserve, 1972-1976*

Richard Lewis graduated from the California Military Academy in 1967 as a Second Lieutenant while serving with the California National Guard. Assigned first as Division Signal Support Officer, he then served as an Armored Cavalry Platoon Leader in the 1/18th Armored Cavalry Regiment

The following year, he and his unit were activated and Lewis was eventually assigned to the 11th Armored Cavalry Regiment, the famed "Black Horse" regiment, serving in Vietnam as a First Lieutenant in command of a platoon in the Regiment's 1st Squadron.

While serving in Vietnam, he received the Purple Heart in 1969 for wounds received in action after his unit was caught in a North Vietnamese ambush. After being discharged from active duty in 1969, Lewis went on to serve in the U.S. Army Reserves from 1972 to 1976 as a Psychological Operations Officer.

During that time, Lewis also attended the Army's Race Relations School located at Treasure Island near San Francisco and graduated as a Race Relations Officer.



**RICHARD T. MILLER**  
*Army, 1974-1977*

Richard Miller volunteered for the U.S. Army right out of high school in the summer of 1974; served three years after basic and specialty training at Ft. Dix, New Jersey; and transferred to Ft. Riley, Kansas, where he spent the remainder of his two and a half years in the First Infantry Division, the "Big Red One."

He was first assigned as a wireman stringing wire for telephones and then was trained as a radio teletype operator working out of an armored personnel carrier.

"Discharged with a sense of responsibility and discipline that has served me well over the years. The biggest benefit was giving me the ability to focus on the rest of my life. I wasn't what you'd call 'educationally inclined'...I joined right after high school and didn't care at the time about furthering my education."

With his DD-214 in-hand, however, Miller enrolled at Kansas State University and, after a year, transferred to Rutgers University, where he received his undergraduate degree in political science. Miller then moved to Los Angeles and graduated from Southwestern Law School.



**W. PATRICK NOONAN**  
*Navy, 1967-1970*

Following graduation in 1967 from the University of Michigan with a Pharmacy degree and an MBA, Patrick Noonan had plans to work in marketing for a large pharmaceutical company. However, with the war in Vietnam escalating and the possibility of getting drafted looming on the horizon, he applied for and received a direct commission in the Navy as a Lieutenant (Junior Grade), with a three year commitment to serve in the Navy's Medical Service Corps as a pharmacist.



Following a month of orientation at the U.S. Naval Hospital in Washington, D.C., Noonan was assigned to the San Diego Naval Hospital and the Naval Recruit Training Center. "At the time the San Diego Naval Hospital was the busiest military hospital in the world with all the casualties returning from Vietnam," he says. "I was blessed that I was able to stay in San Diego the whole time."

Once in San Diego, though, he started thinking about a career in the law and decided to enroll at the University of San Diego Law School, which he attended at night on the GI Bill. By the time of his separation from the Navy, Noonan had reached the rank of Lieutenant Commander.

"I learned respect for others in the Navy" says Noonan. "Your worth among the people you serve with is based on what you do and how you do it. It was, and is, a great environment to learn how to treat other people."

**DONALD J. MIOD**  
*Army, 1969-1971*

Married for two years before being drafted into the U.S. Army in 1969, accountant Don Miod went through basic training at Ft. Ord and advanced training at Ft. Knox, Kentucky, before serving a year in Vietnam as an Armored Reconnaissance Intelligence Specialist with C Troop, 2nd Squadron, 1st Cavalry.

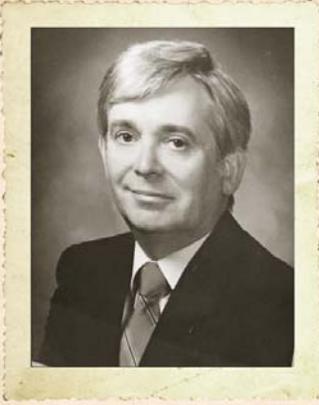
"Two months after I arrived in Vietnam, I got a Dear John letter from my wife," he says. "That was something I had to deal with. What else can be said?"

His assignment to Vietnam was the first time Miod had ever traveled overseas. While 'in country,' Miod recalls how "incredible it was to find out how someone from Minnesota or Alabama lived their life and about their life experiences."

That brotherhood has more than stood the test of time as former members of his old unit meets every two years for a reunion. "We found as many of our troop as we could and started having reunions, and it's amazing to be together with everyone again."

Miod was discharged in 1971 as a Sergeant with a Purple Heart and an Army Commendation Medal with "V" Device. All in all, he says, "I learned how precious and short life can be. It was an amazing experience and I wouldn't trade it for anything. I'd do it all over again even though I was scared to death at a very young age."





**MARK PASTOR**  
*Air National Guard, 1962-1968*

From 1962 to 1968, attorney Mark Pastor served in the California Air National Guard. After extensive training in Texas, Pastor was assigned as a technical supply specialist with the 146th Military Airlift Wing, based in Van Nuys, California.

Soon after enlisting, the 146th was activated and served as a unit of the U.S. Air Force, with two squadrons of C-97 aircraft specializing in long-distance transport missions to Hawaii, Japan,

and Europe, and during the Vietnam War, to South Vietnam, Philippines, Thailand, and Japan.

“We moved a lot of people and materials all over the world,” says Pastor, who graduated from Harvard Law School after completing his undergraduate work at Indiana University. “Overall, it was a good experience. I got to meet a lot of people from different backgrounds and see a lot of the world I wouldn’t have had the chance to see otherwise.”



**TIMOTHY L. O'HAIR**  
*Marine Corps, 2008-2012*

Serving from 2008-2012, O'Hair “entered Marine Corps Officer Candidate School because I lacked direction in my life after college. I knew that I did not want to spend my early 20s in an office, but beyond that, I had no plan. Although I had never been outside of Sacramento for much longer than a week, I got on a plane to Quantico and spent 10 weeks with the infamous Marine Corps Drill Instructors.”



A year after his being commissioned a Second Lieutenant and training at Fort Leonard Wood, Missouri, O'Hair was deployed to Okinawa where he acted as the Executive Officer of a 100-man Field Military Police company. “Rather than doing standard garrison policing, we focused on tactical and combat policing more...we were more akin to an infantry unit than a police unit.”

“I was in Afghanistan a year later monitoring the flow of small-arms to various Afghan military and police tactical units,” he says.

O'Hair deployed to Afghanistan in a dual role. “First, to monitor the flow of foreign sales small arms weapons to Afghan military and police units and, second, conduct security analyses on Afghan Army Hospitals, with an aim toward hardening their physical defenses,

which led to a Defense Meritorious Service Medal,” he says.

Leaving the Marine Corps in 2012 and “once again unsure what was in my future,” O'Hair recalls that, “Unlike some, I didn’t acquire a specific trade from my training. But what I did acquire was perhaps more valuable—I learned to be adaptable to any scenario, to solve-problems however they were presented, and, more than anything else, to always complete my mission, whatever it may be.”

That “sense of determination,” he says, “led me to law school—which was nothing more than a pipe dream before the military—and from law school to the California Department of Justice, where I now serve as a Deputy Attorney General in the Criminal Division.”

In addition to an award of the Defense Meritorious Service Medal, O'Hair also received the Joint Services Achievement Medal, the Joint Services Meritorious Unit Ribbon, the Navy/Marine Corps Achievement Medal, the Afghan Campaign Medal (OEF), and an Overseas Service Ribbon for his service.

**CHRIS  
PODBIELSKI**  
*Navy, 1988-1992*

Chris Podbielski served the U.S. Navy from 1988 to 1992. Completing boot camp training in Orlando, Florida, she attended Defense Information School (DINFOS), the U.S. military's all-service journalism and public affairs school located at that time at Fort Benjamin Harrison, outside of Indianapolis, Indiana.

After graduating from DINFOS, Podbielski was assigned for two years to the U.S. Naval Station Subic Bay in The Philippines, working in radio and television production for a small station under an Air Force command.

She earned two Air Force Commendation Medals for her service during and following the eruption of Mt. Pinatubo in 1991. She later served down under at a small communications station in Exmouth, Australia, with "only a few speed limits and miles of empty shoreline."

Podbielski left the Navy as a Petty Officer Second Class Journalist.



**SCOTT W. WILLIAMS**  
*Air Force, 1989-1992*

Attorney Scott Williams attended Cal State Northridge while taking Air Force ROTC at UCLA. "I received my commission as a Second Lieutenant in 1989 and entered active duty that September at Vandenberg AFB to attend Undergraduate Missile Training."

Williams' first and only station was, what he deems, "the vacation capitol of the world—Grand Forks Air Force Base, North Dakota. We would refer to Chicago as the tropics."

As a Minuteman III ICBM Combat Crew Commander, he served as part of a two man team that would pull about eight 24-hour "alerts" some 80 feet underground the frozen tundra.

"Our primary mission was to maintain the readiness of our nation's land based strategic nuclear force, and to launch if ordered by the President. Fortunately for all mankind, we never got that order," he says.

Williams' day-to-day duties included running remote tests on the missiles via cable or radio—"the silos were several miles from our Launch Control Centers"—and to coordinate maintenance teams who would need access to the sites using remote authentication codes.

"It snows in North Dakota every month except August. In May 1992, I was about ready to pack up for my relief crew's arrival later that morning, when we got the word, 'Snow is too heavy, all crews are staying put, your relief will arrive tomorrow.' And so it was."



**RONALD M. SUPANCIC**  
*Navy, Naval Reserve, 1956-1980*

"When I graduated from high school in 1957, my options seemed very limited," says attorney Ron Supancic. "There was no money for college. The draft was mandatory, but I wanted to get an education. So, as a 16-year-old high school student, I joined the Naval Reserve."

Following a cruise on a World War II-vintage destroyer escort, Supancic was sent to San Diego for boot camp. After graduation, he attended electronics school at the Great Lakes Naval Station, near Chicago, and later qualified for training as a fire control technician with secret clearance to work on classified systems aboard several destroyers.



"After I got out of the Navy, I secured a job in aerospace due to my secret clearance and my electronics training," he says. "I worked nights and attended UCLA during the day, graduated from UCLA with honors and enrolled at USC Law School, all while advancing my eight-year career in aerospace," he says.

All that, he says, was "thanks to the training I received in the Navy and the additional advanced training going into undergraduate and law school. I completed my law degree, then applied and received a commission as a reserve officer in the United States Naval Reserve Judge Advocate General's Corps. I moved up the ranks as an officer, finally arriving at the level of Lieutenant Commander."

Supancic regrets leaving the Navy before completing a 20-year hitch. "It's a mistake I've regretted ever since," he says. "The training I received from the Navy was invaluable to me. It allowed me to begin and build my career."

## DONALD ZELINSKY

Navy, 1955-1958

Attorney Donald Zelinsky spent three years from 1955 to 1958 as a Hospital Corpsman in the U.S. Navy. After graduating from Navy boot camp in San Diego, he was selected for training at the Naval Hospital in San Diego and, when his time for obligatory sea duty arrived, he instead volunteered to serve in the field with the Marines.

The commitment called him to repeat his boot camp experience with the rank of 3rd Class Petty Officer at the Marine Corps Recruit Depot in San Diego, followed by Field Medical School at Camp Pendleton, and additional special operations training at Camp Pendleton.

"I was somewhat enlightened going through boot camp the second time with the Marines because I knew what to expect," says 'Doc' Zelinsky. "It was a lot worse than Navy boot camp, but I tried to turn it around and make fun of it."

While not able to share specifics about the classified operations he was involved in, Zelinsky says his time in the service during the Cold War was



anything but. "It was just after Korea and just before Vietnam, so you can put the pieces together."

The first time he made 3rd Class, he recalls, "Someone with one more stripe than me made fun of my religion. I punched him, broke his jaw and got busted, so I had to make 3rd Class all over again."

What did he take away from his service experience? "I grew up and learned to rely on myself and others, and trust them," he says. "I was also able to develop a good view of the world. There's a lot more good out there than there is bad. You just have to look for it. It's difficult sometimes, but it's what you have to do." 



This Veterans Day, the SFVBA recognizes the following members who have served in our nation's military. We are grateful for their service in upholding the Constitution of the United States and advancing the ideals of liberty, justice, and rule of law.

**Justice Armand Arabian (Ret.)**, Army 1956-1958 ■ **Anthony C. Beller**, Army, 1969-1971, Army Reserve, 1971-1977 ■ **Andy Beltran**, Marine Corps, 2001-2005 ■ **David Berglund**, Navy ■ **Stephen Biegenzahn**, Marine Corps, 1971-1978 ■ **Rick Bitar**, Marine Corps, 1989-1993 ■ **W. Scott Bowersock**, Army, 1961-1964 ■ **James Blatt**, Army, 1968-71 ■ **Jeffrey F. Briskin**, Marine Corps, 1969-1972 ■ **Ronald R. Cohn**, Air National Guard, 1970-1976 ■ **Judge Donald H. Foster (Ret.)**, Army Air Force, 1943-1945 ■ **Sydney Franklin**, Air Force Reserve, 1959-1965 ■ **Paul L. Freese**, Army, 1973-1976 ■ **Albert J. Ghirardelli**, Army, 1943-1945 ■ **Kelvin P. Green**, Army National Guard, 1979-2014 ■ **Kenneth Green**, Army, 1957-1958 ■ **D. Wayne Jeffries**, Navy, 1968-1970, Naval Reserve, 1970-1974 ■ **Lars Johnson**, Navy, 2000-2004, Naval Reserve, 2004-2007 ■ **Judge James A. Kaddo**, Army, 1956-1958, Army Reserve, 1958-1962 ■ **Stephen A. Lenske**, Army Reserve, 1965-1969, Army, 1968-1972, Army Reserve, 1972-1996 ■ **Richard A. Lewis**, National Guard, 1964-1968, Army, 1968-1969, Army Reserve, 1972-1976 ■ **Maurice Lewitt**, Army, 1954-1956 ■ **Alfonso Martinez**, Air Force, 2000-2004, Air Force Reserve, 2004-Present ■ **Richard T. Miller**, Army, 1974-1977 ■ **Donald J. Miod**, Army, 1969-1971 ■ **W. Patrick Noonan**, Navy, 1967-1970 ■ **Timothy L. O'Hair**, Marine Corps, 2008-2012 ■ **Mark Pastor**, Air National Guard, 1962-1968 ■ **Chris Podbielski**, Navy, 1988-1992 ■ **Robert "Rocky" Star**, Navy, 1964-1967 ■ **Julius Stewart**, Navy, 1983-1989 ■ **Ronald M. Supancic**, Navy, Naval Reserve, 1956-1980 ■ **George Vorgitch**, Air Force, 1951-1955 ■ **Frederick J. Weitkamp**, Army, 1945-1946 ■ **Garry Williams**, Army, 1969-1971 ■ **Scott W. Williams**, Air Force, 1989-1992 ■ **Irving Zaroff**, Navy, 1961-1963, Naval Reserve, 1963-1971 ■ **Donald Zelinsky**, Navy, 1955-1958

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# Let's Settle This Mess!

## Prepping for Mediation



By Mark S. Shipow

**L**ITIGATORS KNOW THAT virtually all civil cases settle. Whether the case involves a business venture, a contract, real estate, or any other dispute, the most likely outcome is a resolution outside the courtroom. Even when cases don't settle, there almost always has been an attempt to settle. And this makes a great deal of sense. Litigation is costly and uncertain, and diverts clients away from what they should be doing, whether that is running a business or just living their lives.

What seems to have become the most common path toward settlement is engaging in a mediation: retaining a disinterested person to assist the parties and their counsel in negotiating a settlement. While much has been written about the process by mediators, from their point of

view, less attention has been paid to an attorney's point of view as to what counsel should do to prepare themselves and their clients for mediation.

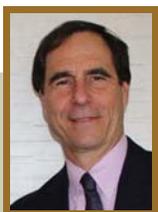
### Timing Is [Not] Everything

When to conduct a mediation involves a balancing of strategic interests. Psychological issues come into play; raising the possibility of mediation often is thought of as a sign of weakness. Mediating before discovery is complete saves some expense and headache, but may leave counsel, the parties and the mediator without the necessary information to assess settlement. While a significant motion is pending, mediation has some obvious advantages, but also leaves open the possibility of the other side "calling your bluff."

Absent some compelling issue affecting timing, attorneys should tend toward trying to mediate as soon as everyone involved has a good handle on the facts of the case, whether through formal or informal discovery, or simply from the prior dealings of the parties. Consideration should be given to other strategic and psychological issues, but those should not govern the decision. Generally speaking, try to get the case resolved as soon as possible.

### Selecting a Mediator

The process of selecting a mediator is not rocket science, and there is no sure-fire guide to the effectiveness of a particular mediator. Most mediators get both positive and negative reviews, so it is hard to place too much stock in those appraisals, absent personal



**Mark S. Shipow** is a sole practitioner specializing in commercial litigation, including partner and shareholder disputes, real estate disputes, and contract disputes. He is a Director of the Valley Community Legal Foundation of the SFVBA. He can be reached at [mshipow@socal.rr.com](mailto:mshipow@socal.rr.com).

experience. Agreeing to opposing counsel's suggested mediator often boosts the opposing client's confidence in the process, which can be a benefit. That needs to be weighed against the need to boost your own client's confidence.

As a very general guideline, judges typically bring a high degree of credibility and tend toward "rule-following," which can be particularly helpful with clients who are unsophisticated, or in matters where questions of law are paramount. Attorney mediators, on the other hand, tend to be more creative and focus on practical solutions. The most important qualification is someone who will be active and engaged in the process, without being overbearing.

#### **Make the Client Comfortable**

As most clients have never been through mediation, it's important to make everyone involved comfortable with the process to avoid the negative reaction naturally engendered by any surprises that might arise. Let the client know about the possibility of a joint meeting and its possible consequences. Decide how you and the client are going to interact with the opposing counsel and party—avoid contact, be friendly, play good cop/bad cop, etc.

Advise the client whether there will be separate conference rooms and the ability to have caucuses without the mediator present and advise them that there will be significant pressure to settle, but remind the client the mediator does not have the authority to order or require anything.

Also, it's important to decide what the client's role will be during the mediation. Ask whether the client will answer the mediator's questions directly, whether the attorney should act as the sole spokesperson, or should the client prepare and deliver a presentation.

#### **Plan, but Be Flexible**

Given the amount of time and money

invested in the mediation, make the most of it. Before the mediation, and even before writing your brief, come up with a plan for how to conduct the mediation—think through alternatives, give some thought to starting offers/demands on both sides, and strategize potential end games.

Mediators often talk about BATNA (the "Best Alternative to Negotiated Agreement," *i.e.*, the likely best outcome if you don't settle) and WATNA (the "Worst Alternative to Negotiated Agreement," *i.e.*, the likely worst outcome if you don't settle), and it's a good idea to study those alternatives prior to the mediation.

Once it's decided which the best alternative is, strategize about how to achieve the client's goals. But even with all this preparation, don't forget how to be adaptable and adjust to what actually happens during the mediation, as being overly prepared and too rigid might well lead to your not recognizing a positive resolution when it presents itself.

#### **Play Nice and Share**

There is absolutely no advantage to not letting the mediator know what your position is, what support you have for that position, and why your case is better than the opposition's, so counsel are advised to submit a brief in all mediations.

Questions sometimes arise as to whether briefs should be exchanged between counsel, but more often than not, an exchange is best in order to get everything out in the open.

A confidential brief submitted only to the mediator is seen as a way for both counsel to be candid about the weaknesses of their respective cases—and, of course, say why those weaknesses don't impact settlement—but in fact, attorneys rarely use a confidential brief to be open and honest and, instead address what might otherwise be considered confidential matters in separate communications with the mediator at the time of the mediation.

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**Joint Sluggfest**

There was a time when virtually all mediations started out with a joint session, with the mediator, counsel and the parties all sitting in a room together. After a brief introduction by the mediator, the attorneys typically presented their case and, although the mediator would admonish counsel to be brief and non-confrontational, the presentation almost always proved to be neither.

But brevity typically is not attorneys' forte. Besides, how do you make the mediator understand that your client's case is better than the opposing party's case without being somewhat confrontational, especially with your client sitting there and taking in everything you say and do. In one particular case, the mediator was urged to forgo a joint meeting—at least at the outset—after a particular mediation in which one party lurched over the conference table and almost came to blows with the opposing party.

To avoid such occurrences, it's best for the mediator to hold only separate sessions, or joint sessions with counsel only, unless the parties get to a point where a joint session makes sense to discuss a final issue that might get the settlement done. Until then, there is no need for the posturing that necessarily occurs in a joint meeting. If the parties and counsel don't know the other side's position by the start of the mediation, a joint session is not the solution.

**Getting the Mediator on Your Side**

Although the mediator cannot make a decision one way or the other, you certainly want the mediator to believe in your position and convince the other side to settle. The key is a concerted effort to establish a rapport with the

mediator: be courteous, engage in some small talk, and let the mediator get to know you and your client.

On a more substantive level, answer the mediator's questions directly, as you would if you were addressing a judge or jury. Establish credibility by, among other things, recognizing weaknesses in your case, and making cogent, logical arguments. Listen, give credence, to what the mediator has to say and try to follow the mediator's lead when it comes to the strategy of making demands and counteroffers. The idea is to have the mediator as your ally.



It's important to decide what the client's role will be during the mediation."

**Enforcing Mediated Settlements**

Because the goal of a mediation is to secure an enforceable settlement, plan in advance how to achieve that goal.

Although mediators often have settlement forms that can be filled out, it is preferable to customize the template of a settlement agreement on your laptop computer onsite based on the agreement the parties have reached.

It is vital to include a specific paragraph waiving the mediation privilege for enforcement of an agreement that could read, for example, "It is the intent of the parties... that all of the terms of this agreement may be disclosed to a court of law and shall be enforceable and binding upon them in a court of law."<sup>1</sup> It's also wise to typically refer to enforcement through proceedings under C.C.P. §664.6.

Remember that your role is to help your client get out of litigation and back to business. That's in your interest as well, as after all, good settlements make satisfied clients, and satisfied clients can make life so much easier. 

<sup>1</sup> Pursuant to Evidence Code §§1122(a)(1) and 1123(b) and Code of Civil Procedure §664.6.



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# IRS Rules for Partnership Allocations

By Angad Singh



**P**ARTNERSHIP TAXATION IN itself can be a very complicated and confusing subset of the law, and partnership allocation rules can be even more dense and unclear for attorneys unfamiliar with this specialization. This area of the law not only includes statutes and case law, but also consists of commonly used practices that have been widely used for years.

Often, attorneys specializing in business or real estate law lack the requisite taxation knowledge to appropriately advise their clients on tax matters related to their partnership allocations. While partnership taxation allows partners to be flexible in their allocation arrangements, the Internal Revenue Service (IRS) has very strict rules regarding partnership allocation provisions that must be complied with in order for the partners' allocations to be respected. Otherwise, the IRS will reject the partnership's allocation provision.

While partnership allocation provisions are a very specific aspect of the law and should best be left to professionals with experience in the

tax field, the focus of this article is to provide attorneys unfamiliar with tax law with a better background understanding of partnership allocation provisions in order to better assist their clients and, at the same time, better understand all aspects of the partnership agreement.

## Section 704

26 U.S. Code §704 provides the overall basic requirements for the IRS to deem allocation provisions valid. If a partnership allocation clause in an agreement does not follow the basic guidelines set forth in §704, the IRS will reject the allocation provisions stated in the agreement.

According to §704(a), a partner's distributive share of income or loss "shall be determined by the partnership agreement." While at first this may seem logical and simple enough to follow, issues arise when partnerships create special allocations, which distribute more of the gain or loss to one specific partner and do not follow the allocation provisions set forth in the partnership agreement. In order for special allocations to be respected,

the allocations must fulfill the complex §704(b) requirements.

Section 704(b) provides that a partner's distributive share of a partnership's profits and losses "will be determined in accordance with the partner's percentage interest in the partnership if the agreement does not state the partner's distributive percent or the allocation stated in the agreement does not have substantial economic effect."

Substantial economic effect requires the eventual alignment of economic interests and tax allocations of income in a partnership agreement. In other words, corresponding book allocations must follow tax allocations.

The landmark case *Orrisch v. Commissioner*<sup>1</sup> helped solidify the concept of substantial economic effect. In that case, the government denied substantial economic effect.<sup>2</sup> The two partners each owned half of the partnership, but had a special allocation in which all depreciation deductions were specially allocated to the partner with much more taxable income due a gain chargeback provision.<sup>3</sup>



**Angad Singh**, a tax associate at the boutique tax and accounting firm Singh and Associates, LLP in Encino, specializes in partnership taxation, state and local taxation, and specialty tax issues related to real estate. He can be reached at [angad@singhandassociatesllp.com](mailto:angad@singhandassociatesllp.com).

In order for this special allocation to be respected, the allocation must have substantial economic effect. Otherwise, the allocations are based on the owners' percentage ownership in the partnership.<sup>4</sup> Here, the IRS denied the special allocation because the tax allocation of depreciation deductions was not followed by a corresponding book (or economic) allocation.<sup>5</sup>

The case also held that a special allocation would not be respected if the primary purpose of the distribution was the avoidance of tax.<sup>6</sup>

### Substantial Economic Effect

In order for a special allocation to be respected, it must have both substantial and economic effect,<sup>7</sup> with a single primary method for an allocation to be considered substantial, and two methods for an allocation to have an economic effect.

A special allocation must be considered substantial if it is to be respected. Substantiality refers to the idea that the allocation must be reasonably likely to substantially affect the pretax dollar amount. In other words, there needs to be a legitimate non-tax reason for the special allocation.

There are two specific types of allocations that one needs to be especially aware of in dealing with substantiality—first, an allocation cannot be shifting. A shifting tax allocation<sup>8</sup> is when the tax liability of all the partners is less than without the allocation. If the shifting of the distribution results in avoiding taxes, the allocation will not be deemed substantial. This is especially possible when partners are in different marginal tax brackets or one partner has tax-exempt income.

Second, a transitory allocation<sup>9</sup> must be avoided as well. A transitory allocation results in the partners' total tax liability being less than the liability that would have existed prior to the special allocation when the allocation covers more than one year. Similarly, the allocation will not be deemed

substantial if the transitory allocation results in avoiding taxes.

There are two primary ways for a special allocation to have economic effect.<sup>10</sup> First, an allocation can have economic effect if it meets a primary test<sup>11</sup> with three requirements: (1) the partnership must maintain capital accounts in order to make sure there is no offsetting; (2) the partnership is required to liquidate in accordance with positive capital accounts, which makes sure the capital accounts have true meaning; and (3) the partnership agreement must contain an unconditional deficit restoration obligation (DRO).<sup>12</sup> A DRO requires a partner to restore their deficits in his partnership capital account following a liquidation. Without a DRO, the liability is just limited to the investment amount.

Second, an allocation can have economic effect if it meets the alternative test.<sup>13</sup> This test has the same first two requirements as the primary test, but lacks a DRO. Instead, there is a qualified income offset provision (QIOP),<sup>14</sup> which mandates that if there is an unexpected or unplanned distribution that reduces the capital account to below zero, the partnership must immediately allocate taxable income to that specific partner in order to remove the deficit.

However, there is also a third method by which a special allocation can be deemed valid under §704. Partnership agreements that do not qualify under the first two tests can still qualify even if the economic effect requirements are not satisfied as long as the results of a hypothetical liquidation would produce the identical economic results as a partnership agreement that satisfied the §704(b) requirements.<sup>15</sup>

This economic equivalence test is relied upon when tax professionals insert distribution-based tax allocation provisions instead of the traditional allocation-based provisions that are discussed in more detail in the following section.



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### Allocation-based vs. Distribution-based Partnership Agreements

Allocation-based and distribution-based agreements have several differences. First, allocation-based agreements specifically state how income and loss items are allocated to the various partners. On the other hand, distribution-based agreements mandate that income and loss items are allocated in a manner through which capital accounts are equivalent to the distributed amounts during a fictional liquidation based on the distribution waterfall—the provision in a partnership agreement that determines the order and method of distributions going to the partners. In other words, it contains the hierarchy through which distributions are made to partners.

As a result, allocation-based agreements focus on individual income and loss, while distribution-based agreements focus on the actual distribution waterfall.

An allocation-based agreement will have substantial economic effect if it follows the three requirements under either the traditional or alternative methods discussed earlier. However, a distribution-based agreement will not have substantial economic effect because there is no liquidating in accordance with positive capital accounts. Instead, distribution-based agreement liquidating distributions are based on current allocations rather than basing the liquidating distributions on capital account balances. As a result, they rely on the economic equivalence test for survival.

### Layer Cake vs. Target Allocation

A traditional allocation-based partnership agreement uses the “layer cake” approach, while the newer distribution-based partnership agreement uses the “target allocation” method. A layer cake approach uses a distribution waterfall in which profits and losses are allocated based on the requirements stated in each waterfall level.

A target allocation provision determines allocations based on each partner’s target capital accounts

over their partially adjusted capital accounts for each fiscal year by allocating such profits/losses to the partners. Furthermore, no portion of the company’s profits/losses will be allocated to the partner whose partially adjusted capital account is greater than or equal to her target capital account for the fiscal year.

Deciding whether to include either a layer cake provision or target allocation provision in a partnership agreement is based on several factors. Some tax attorneys prefer layer cake provisions because, if drafted correctly, they safely satisfy the §704 substantial economic effect test, while target allocations must be carefully drafted to qualify under the economic equivalency test.

The layer cake approach can often lead to very long and complicated provisions with numerous hierarchical steps, but many tax professionals claim the provisions make it easier to calculate the resulting distributions for each partner. The target allocation approach can be drafted in a much simpler way, but requires significantly more work in calculating the resulting distributions. The decision to choose either method should be made based on the individual client’s needs and careful analysis.

Partnership taxation can result in very complicated structuring and arrangements. Failing to satisfy any of the requirements can result in the IRS not recognizing the distribution arrangement in the partnership agreement, which highlights how critical it is for individuals to correctly draft and evaluate the allocation provision in the partnership agreement. 

<sup>1</sup> *Orrisch v. Commissioner*, 55 T.C. 395 (1970).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> §704(b).

<sup>8</sup> Reg. 1.704-1(b)(2)(iii)(b).

<sup>9</sup> Reg. 1.704-1(b)(2)(iii)(c).

<sup>10</sup> Reg. 1.704-1(b)(1).

<sup>11</sup> Reg. 1.704-1(b)(2)(ii).

<sup>12</sup> *Id.*

<sup>13</sup> Reg. 1.704-1(b)(2)(ii)(d).

<sup>14</sup> *Id.*

<sup>15</sup> Reg. 1.704-1(b)(2)(ii)(i).

## A Simple, Not-So-Simple Contract

**CATHERINE  
CARBALLO-MERINO**  
ARS Referral Consultant



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**IT SEEMED TO BE A SOMEWHAT SIMPLE SITUATION—** Paul had bad credit and had signed over the title to his home to his sister Mary and her boyfriend John.

Their agreement called for the documents to carry both Mary’s and John’s names, but that Paul would make all of the house payments. Once Paul was able to build up enough credit, the house would be transferred back to him, with Mary’s and John’s names taken off the title and mortgage.

When Mary was asked to take over the title and mortgage, she brought John into the arrangement in order to improve their chances of obtaining a better loan. Unfortunately, Mary’s and John’s relationship ended and his name wasn’t taken off the title of the home after their break-up.

Paul followed through on making all of the payments in full and on time, and when he was in a financially stable position, he asked Mary to sign the title over to him. Mary agreed to do so; John, however, refused.

According to John, Mary had promised him some form of compensation in exchange for using his credit. Paul had made all the payments in full and, since he hadn’t made any promises to John, countered that he wasn’t obligated to compensate John in any way.

After an unsuccessful attempt to find an attorney, a call was made to the Attorney Referral Service and a referral was made to panel member and SFVBA past-president, Carol L. Newman.

It was a straightforward case for Newman, one that rested on a simple legal term, “resulting trust, an implied or voluntary trust arising from the transfer of the property under circumstances showing that the transferee was not intended to receive a beneficial interest in the trust.”

In a rather surprising move, John’s attorneys took the case to trial, even though his allegations amounted to an illusory contract, with John unable to specify what he had been promised. The only real challenge came from the presiding judge, who stated that John had taken a risk and should therefore be compensated with an amount greater than what Newman offered. Newman disagreed, as Paul had fulfilled his end of the agreement and made all the mortgage payments.

“I didn’t think that there was any way that they might win, but it cost my clients a lot of money to try the case to get to that point,” says Newman. “Litigation is a game for kings and queens and John paid for more than what he gained.” 

*(The names John, Mary, and Paul are pseudonyms in order to protect client confidentiality.)*

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## CASA: Reuniting a Child with His Mother

**T**HE MISSION OF CASA OF LOS Angeles is to improve the lives of children in the dependency system by pairing them with trained volunteer advocates. CASA seeks to reduce and reverse the effects of child abuse and neglect. Nowhere in the nation is the problem greater than in Los Angeles County, where 30,000 children who have been abused or neglected are under the jurisdiction of the Dependency Court.

Over the past two years the VLCF has taken numerous opportunities in *Valley Lawyer* to praise the efforts of Court Appointed Special Advocates (CASA) and spotlight the positive impact they have on our community. As much about the often emotionally demanding and challenging work by the advocates or caseworkers, those stories are about the heroic efforts of the children and their families struggling to overcome adversity.

The story of Regan, a long-time CASA, and Jamari, an inspirational young man, is one of those stories. When a CASA is first assigned to a child's case, they lay a foundation for their work

by getting to know the child and their situation. Regan recalled that when first meeting Jamari, who was five years old at the time, he had already been in foster



care for several months following a failed adoption. After Jamari was removed from his mother's care, and extremely agitated, he began exhibiting violent behavior, which resulted in his expulsion from several pre-schools. Neither

**LAURENCE N. KALDOR**  
President



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shocked nor surprised, Regan explained that, "even at such a young age, [Jamari] had expressed suicidal thoughts."

The young boy's situation was both heartbreaking and dire. Among the problems many troubled or at-risk youth face are their limited options and a system that seems stacked against them. Many indigent adolescents get lost in the system or buried in the bureaucracy.

In Jamari's case, which is all too familiar, Tera—his mother, primary caregiver, and only adult relative in Southern California—was battling addiction and her own demons. Fortunately, Regan began advocating for a number of services to confront Jamari's behavioral issues, secure a proactive educational environment, and arrange for his placement in a stable foster home.

Sadly, due to Tera's personal battles with drug and alcohol addiction, it appeared as though Jamari and his mother might be permanently separated. Again, in an example of true advocacy, Regan, knowing how vital

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the maternal bond is, was not willing to give up easily. To her, Jamari was not just a case number or failed delinquent to be shuffled and filed away. Regan made certain to stay in contact with Tera and closely monitored her struggles and efforts towards recovery.

The choice had to ultimately be Tera's, but when Regan was convinced that Tera was determined and seriously seeking help for her addictions, she worked tirelessly to reunite Tera and her son. Over the coming months, Tera moved into a sober living facility and was actively making strides towards sobriety. Within a year, Regan was so impressed with Tera's progress toward sobriety, that she petitioned the court to return Jamari to his mother's care so that she could provide him with the emotional support he craved and to help him deal with his damaged spirit.

Today, Jamari is back living with his mother. "Jamari's behavioral issues have vastly improved and he is

currently thriving in first grade," says Regan.

On December 22, 2016, Jamari received the best Christmas present ever when, sitting in Dependency Court, flanked by his mom on one side and his CASA on the other, he heard a judge officially rule his case closed.

CASA is supported by the generous contributions of individuals, companies, and organizations. The VCLF is proud to provide financial support to CASA and amazing people like Jamari, Tera and Regan.

"There are far too many Jamaris in the San Fernando Valley that need our love and support," expresses VCLF President Laurence N. Kaldor. "We are grateful for the continuous support that *Valley Lawyer* readers continue to provide. Unfortunately, there never seems to be a shortage of young people in need. However, with your sustained financial donations we have and continue to make a real difference in the lives of kids like Jamari." 

### ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association with a mission to support the legal needs of the San Fernando Valley's youth, victims of domestic violence, and veterans. The VCLF also provides educational grants to qualified students who wish to pursue legal careers. The Foundation relies on donations to fund its work. To donate to the VCLF and support its efforts on behalf of the Valley community, visit [www.thevclf.org](http://www.thevclf.org) and help us make a difference in our community.

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## Choosing the First Among Equals

*Dear Phil,*

*We have a relatively small, but successful, firm, and we're ready to expand by bringing another attorney into the fold. We've attracted several outstanding applicants with relatively similar professional experience who are vying for the position. Each one would be great addition to our team, but we're having a difficult time deciding which attorney to give the nod to. Any suggestions on how to vet two equals?*

*Signed,*

*Stalled*



*Illustration by Gabriella Anderson*

**D**EAR STALLED: FOR A SMALL FIRM, ADDING another attorney is one of the biggest decisions you will ever make. So, I understand that you want to get it right.

The best advice I can give is to be honestly objective. Many law firms and recruiters resort back to the pros and cons chart you probably learned back in middle school. Make a big, capital “T” on a sheet of blank paper. At the top, write each candidate’s name. Then make a list of the pros and cons or pluses and minuses. You may be surprised when you actually look at the chart when fully filled out. Candidates you assumed were equal, may not really be so equal.

Each firm and each decision-maker may have their own most important criteria. There is no universal formula. Of course you will put down the usual criteria such as education and work experience. However, like you said, many candidates are about the same in those categories.

You might want to consider some aspects of your practice that are important going forward—for example, does the candidate fit the image of the firm for marketing purposes or does the candidate have public speaking

experience? I have been told by recruiters that a very important consideration is whether the candidate is local and part of the local legal community.

In addition, a major red flag for many firms is the candidate’s employment “foot print.” A good axiom to follow adds up the average number of years or months of prior employment, including pre-law, to come up with a good idea of what you can reasonably expect in terms of commitment from your new hire.

By all means, Google search your candidates and look on social media. Are there indications of—for lack of better description—rudeness, a lack of self-control, or extreme behavior? Is the candidate stable in his or her personal life or are they party animals?

In the end, your collective gut instinct is probably correct as a general answer to this question, who is the most likely to fit into the work and social environment of the firm? The answer to this question will be your best guide.

Good hunting!

*Phil*

**Dear Phil** is an advice column appearing regularly in *Valley Lawyer Magazine*. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Answers are drafted by *Valley Lawyer’s* Editorial Committee. Submit questions to [editor@sfvba.org](mailto:editor@sfvba.org).



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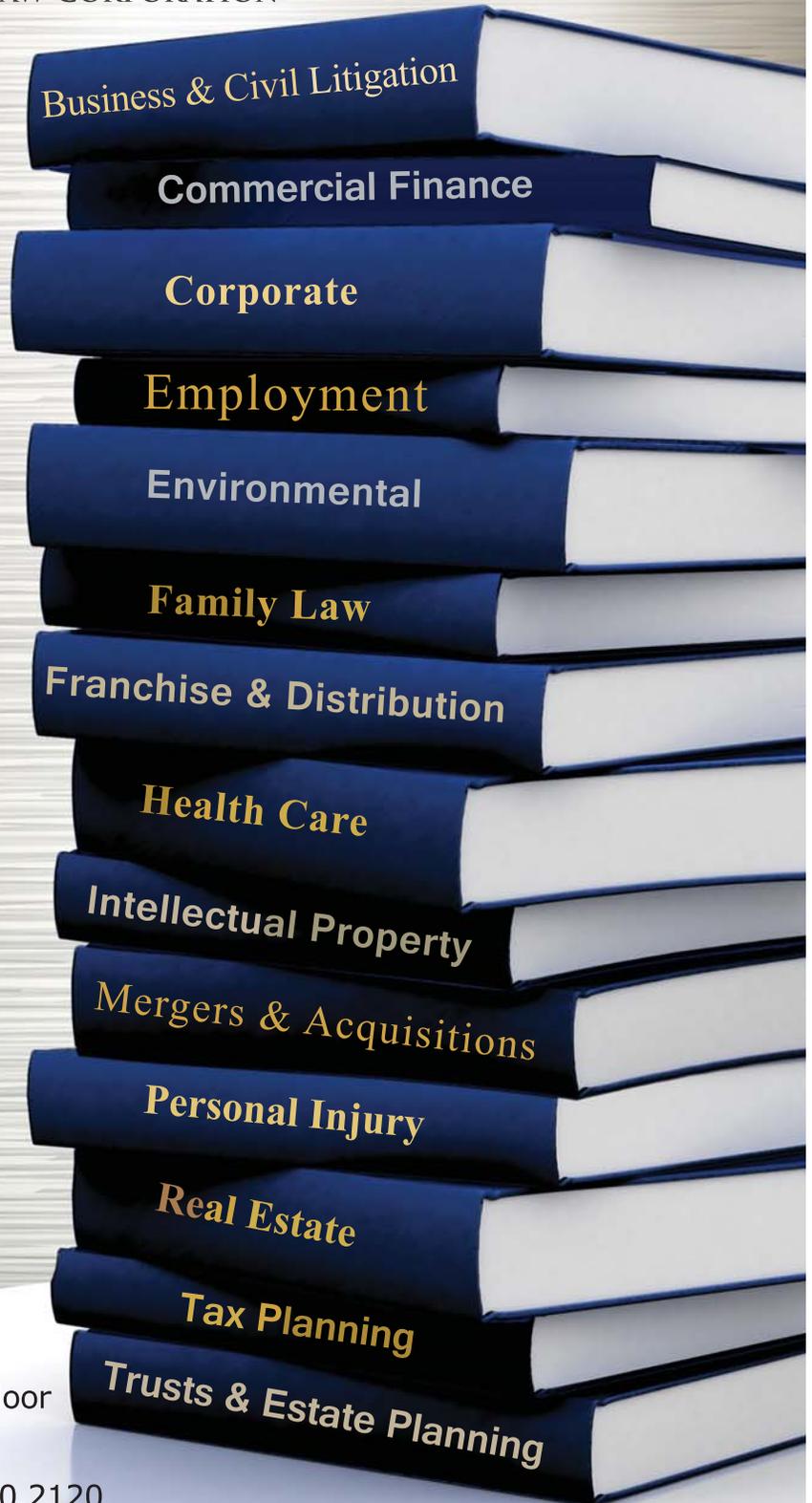
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