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A Publication of the San Fernando Valley Bar Association

California Employment Laws: What's New for 2020

Inverse Condemnation and Private Utility Liability for Wildfires

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Are you 2020?

AS WE SAY GOODBYE TO 2019, prepare to be pelted by friends, family, colleagues and social media to announce and commit to at least one New Year's resolution.

Probably all of us say to ourselves that we are absolutely, positively going to do something different this year that will make us better than we were in the last year.

You all know the stats that come out in February about people not sticking to their New Year's resolution(s). We invariably slide back into our old habits and routines, and our lives remain largely the same as in years past. Will this year be any different? I am going to be very 2020 this year and I want to drag you along with me.

Please allow me to explain.

Of course, the number one New Year's resolution is to lose weight. It's not that easy, is it? In the abstract, nothing could be simpler, just consistently burn more calories than we consume and, over the course of time, the weight will come off. Sure, there are a million diets and routines. Some are better than others. Some are downright dangerous.

I am beginning to believe that you cannot really change just one aspect of your life—like losing weight—successfully.

For example, if you lose the ten pounds as resolved, then you are likely to revert to the same habits that made you want to lose the weight in the first place.

I am usually skeptical when I hear the weight loss resolution. Not because I do not think it is a good idea; I most

certainly do. However, I generally do not think that people have the ability to pull one segment of their life, like diet, and then radically alter it.

Rather, one has to change everything in order to change something. Perhaps, people just need to be consistently positive in all aspects of their lives in order to really accomplish their goals. It is becoming clearer to me that the way someone does one thing is the way they do everything.

“

It is becoming clearer to me that the way someone does one thing is the way they do everything.”

This year, I am urging positive change across the board. I am calling it 2020 because it sounds cool, futuristic and is a commonly-used label for perfect vision and clarity. So, what is being 2020?

I would answer that with a resolution and action plan to do **everything** better.

After all, it is 2020. The time is now. It can't wait. Your excuses disappeared in the rearview mirror along with 2019.

You need to start today to be a better spouse, son or daughter,

father or mother, friend or neighbor. You need to make more money and take more time off. You need to write that article and volunteer for causes you're passionate about.

If you are stumped, maybe use SFVBA as a default. We have *Valley Lawyer* magazine for that article you write that will establish you as a thought leader. The volunteering opportunities are too numerous to mention. The MCLE Marathon and the calendar of events and programs will educate you to become a better lawyer.

Please do not miss the networking opportunities offered at our Bar function, but especially those provided by the Valley Bar Network.

A quick aside. The MCLE Marathon will take place on January 17 and 18 at the SFVBA offices in Woodland Hills and the lineup of top lawyer presenters is truly impressive. The event always serves as an excellent way to both fulfill your MCLE requirements and get the hottest tips to grow your practice.

I know some of you are going to say that it is too much to positively change everything all at once. We have all been programed to believe that a person is only capable of slight, incremental change. So, we think picking out one small area for improvement is more than enough and easier to do bit-by-bit.

So, are you 2020? If not, let's make a resolution we can keep and an action plan to do **everything** better this year. 🏠

BARRY P. GOLDBERG
SFVBA President



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Friday, January 17

- ◆ 9:00 a.m.
Registration, Networking and Continental Breakfast
- ◆ 9:30 a.m.
Prevention of Substance Abuse
Douglas Ridley
The Law Offices of Douglas Ridley
1 MCLE Hour (Competence Issues)
- ◆ 10:30 a.m.
Real Estate and Construction Litigation: Preventive Measures, Rights & Remedies
Paul Bauducco and John Marshall
Lewitt Hackman
1 MCLE Hour
- ◆ 11:30 a.m.
Hot Tips Regarding Legal Malpractice
Marshall R. Cole, Nemecek Cole
1 MCLE Hour (Legal Ethics)
- ◆ 12:30 p.m.
Lunch (Inclusive for All-Day Registrants)
- ◆ 1:00 p.m.
Eliminating Harassment, Discrimination and Bias in the Workplace
Tal Yeyni and Chrystal Ferber,
Lewitt Hackman
1 MCLE Hour
(Recognition and Elimination of Bias in the Legal Profession and Society)
- ◆ 2:00 p.m.
Fiduciary Banking 101
Andre Sarkissian, Manufacturers Bank
1 MCLE Hour
- ◆ 3:00 p.m.
Employment Laws for Domestic Workers and Caregivers & Preparing Your Estate to Address Potential Exposure
Nicole Kamm and Kira S. Masteller
2 MCLE Hours

Saturday, January 18

- ◆ 9:00 a.m.
Registration, Networking and Continental Breakfast
- ◆ 9:30 a.m.
2020 Nuts and Bolts of Estate Planning
Alice Salvo
Law Offices of Alice A. Salvo
1.5 MCLE Hours
- ◆ 11:00 a.m.
Avoiding Bar Discipline
Professor Robert Barrett
2 MCLE Hours (Legal Ethics)
- ◆ 1:00 p.m.
Lunch (Inclusive for All-Day Registrants)
- ◆ 1:30 p.m.
Technology and Your Firm
Barry P. Goldberg
1 MCLE Hour
- ◆ 2:30 p.m.
Client Trust Accounting
Hratch Karakachian
1 MCLE Hour (Legal Ethics)

MCLE MARATHON REGISTRATION FEES

	Member	Non-member
<input type="checkbox"/> 2-Day Seminar	\$199	\$499
or		
<input type="checkbox"/> Friday, January 17	\$169	\$299
or		
<input type="checkbox"/> Saturday, January 18	\$149	\$279
or		
<input type="checkbox"/> Per MCLE Hour	\$40	\$69
<input checked="" type="checkbox"/> Class Attending		
<input type="checkbox"/> Late Registration Fee	\$40	\$60
or		
<input type="checkbox"/> MCLE Self-Study Flash Drive (with Marathon Registration)	\$169	\$169
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Signature _____

Registrations: events@sfvba.org, call (818) 227-0495 or visit www.sfvba.org. Registration at the door not guaranteed!

Simpler Times Revisited

REMEMBER WHEN I GOT MY first 'real' job. It was back in the summer just before President John F. Kennedy made his first—and last—visit to Dallas, Texas.

I was 12 years old and living in a household where the concept of an allowance was as insanely bizarre as the thought of flooding our backyard and stocking it with sea monkeys. Thus, walking-around money was accumulated by collecting glass soda bottles (Nehi, Squirt, Nesbitt, Dr. Pepper, Bubble-Up, Yoo-Hoo, Coca-Cola, whatever) and turning them in at the local Piggly Wiggly market for their 3¢ deposit value. Recycling in its most primitive form, perhaps.

It wasn't too bad, really. It added up as I was, over time, able to accumulate a respectable collection of baseball cards and *Classics Illustrated* comic books and enjoy an occasional raspberry-filled doughnut from the Helm's truck that cruised our neighborhood every Wednesday.

The 'real' job—the one where I worked for someone else, actually punched a time clock and drew a check every week—sprang forth from a walk-in at what is now the Braemar Country Club in Tarzana. Then known as the Deauville CC ("Home of the Deauville Proud Crowd"), I simply walked in one Saturday morning and asked the General Manager if the Club could be expected to prosper without my albeit limited services.

After his eyebrows lowered, a quick, narrow-eyed appraisal through a cloud of cigarette smoke and the briefest of interviews (akin to the name, rank

MICHAEL D. WHITE
SFVBA Editor



michael@sfvba.org

and serial number questions thrown at prisoners of war), sealed the deal.

I was, thus, summarily launched up the rickety stepladder of somewhat limited success that propelled me from collecting golf balls on the driving range to electric cart recharger to dishwasher to busboy to the highest rung I could ever hope to achieve there...that of cook's helper—slicing and dicing whatever and opening depth charge-sized cans of tomatoes under the tutelage of a somewhat grizzled Executive Chef who, if rumor held, had learned his management skills in one of Stalin's Gulags.

Those were the days. It was an education in real life that netted me a cool .85¢ an hour after taxes. They were innocent times with no major rules to speak of. I was underage and talk of an actual work permit drew a look that could take the chrome of a trailer hitch and a curt, "Get back to work." And so it went.

Needless to say, it was a different time. Thanks to Nicole Kamm and Hannah Sweiss of Fisher Phillips for their in-depth piece laying that out by detailing the components of the avalanche of new employment laws and regulations that California-based companies must adhere to, starting now.

Also, thanks to SFVBA President Barry P. Goldberg for his article on Attorney Referral Services in light of the recent LegalMatch court decision; Bar Trustee Kyle M. Ellis for the story on this year's first-ever SFVBA Mock Trial Competition; and Alicia B. Bartley for her MCLE on Inverse Condemnation.

We hope you enjoy. Happy New Year! 🍷

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- Murder: Not Guilty by Reason of Insanity, Jury (Van Nuys)
- Medical Fraud Case: Dismissed, Preliminary Hearing (Ventura)
- Domestic Violence: Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
- Federal RICO prosecution: Not Guilty verdict on RICO and drug conspiracy charges (Downtown, LA)
- Murder case appeal: Conviction reversed based on ineffective assistance of trial counsel (Downtown, LA)
- High-profile defense: Charges dropped against celebrity accused of threatening government officials



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SUN	MON	TUE	WED	THU	FRI	SAT
	Save the Date SFVBA Inaugural Mock Trial Competition April 17-18, 2020		 1 2020 — HAPPY NEW YEAR — SFVBA OFFICES CLOSED 8	2	3	4
5	6	7	8	9 Membership & Marketing Committee 6:00 PM SFVBA OFFICES	10	11
12	13	14 Probate & Estate Planning Section Spendthrift Trusts after Carmack and Blech – What Do We Do Now? 12:00 NOON MONTEREY AT ENCINO RESTAURANT The world of spendthrift trusts has been turned on its head since the California Supreme Court's 2017 ruling in <i>Carmack v. Reynolds</i> . Attorney Adam L. Streltzer will discuss this and the recent 2019 case of <i>Blech v. Blech</i> and the issues with California's spendthrift law. (1 MCLE Hour) <hr/> Board of Trustees 6:00 PM SFVBA OFFICES	 17-18 SFVBA 23RD ANNUAL MCLE MARATHON SFVBA OFFICES 20750 Ventura Blvd. Suite 140 Woodland Hills See page 8			
19	20  SFVBA OFFICES CLOSED	21 Taxation Law Section Tax Controversy Matters 12:00 NOON SFVBA OFFICES Former DOJ Attorney Chad Nardiello will update the group on federal and state tax controversy matters. (1 MCLE Hour)	22	23	24	25
26	27 Family Law Section New Laws 5:30 PM MONTEREY AT ENCINO RESTAURANT A must-attend for all family law attorneys, Lionel Levin and Robert Schibel will give the yearly round-up. Approved for Family Law Legal Specialization. (1.5 MCLE Hours)	28 Mock Trial Committee 6:00 PM SFVBA OFFICES <hr/> ARS Committee 6:00 PM SFVBA OFFICES <hr/> Editorial Committee 12:00 NOON SFVBA OFFICES	29	30 DINNER AT MY PLACE 6:30 PM Granada Hills  \$25 to attend	31 Bankruptcy Law Section 11 U.S.C. § 523: Meeting the Bankruptcy Judge's Expectations in Non-Dischargeability Litigation 12:00 NOON SFVBA OFFICES Judge Barry Russell and attorney J. Scott Bovitz (co-editor Consumer Corner column, ABI Journal) lead the discussion. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	

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BLACK HISTORY MONTH						
						1
2	 3 5:30 PM	4	5	6 Membership & Marketing Committee 6:00 PM SFVBA OFFICES	7 Employment Law Section Business Owner Beware: You Can Be Personally Liable for Wage and Hour Violations 12:00 NOON SFVBA OFFICES Attorney David G. Jones kicks off the New Year as the first speaker. He will discuss Employer Liability under California Labor Code Section 558.1 and how best to inform your clients. (1 MCLE Hour)	8
9	10	11 Probate & Estate Planning Section Keeping Current: What's New in Estates and Trusts 12:00 NOON MONTEREY AT ENCINO RESTAURANT Attorney Mark J. Phillips will lead the discussion. (1 MCLE Hour) <hr/> Board of Trustees 6:00 PM SFVBA OFFICES	12	13 Business Law & Real Property Section Property & Business Insurance Coverage 12:00 NOON SFVBA OFFICES How best to avoid exposure. Sponsored by Gaspar Insurance Services. Free to Current Members! (1 MCLE Hour)	14	15
16	 SFVBA OFFICES CLOSED	17	18	19	20	21
		18 Taxation Law Section Update on the Taxation of Cryptocurrency Transactions 12:00 NOON SFVBA OFFICES Attorney and certified taxation law specialist Michel Stein will discuss new IRS pronouncements and enforcement action regarding taxation of cryptocurrency transactions. (1 MCLE Hour) <hr/> Mock Trial Committee 6:00 PM SFVBA OFFICES			21 Bankruptcy Law Section 9th Circuit Case Review 12:00 NOON SFVBA OFFICES Judge Victoria S. Kaufman, Attorneys Stella A. Havkin, and Nancy Zamora discuss the pertinent cases. Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	22

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Inverse Condemnation and Private Utility Liability for Wildfires

By Alicia B. Bartley

Inverse condemnation is the flip side of eminent domain, the process rooted in the Fifth and Fourteenth Amendments of the United States Constitution, which gives a government agency the authority to seize private property for the benefit of the public so long as the property owner is fairly compensated.



DEVASTATING, DESTRUCTIVE FIRES HAVE become the new normal in California with consequences that reach far beyond the lives lost and the earth and structures scorched.

For example, one private utility company, Pacific Gas & Electric Co. (PG&E), has been driven into bankruptcy as a result of the liability it faces for the role its electrical distribution and transmission lines played in the recent wildfires.

And, in an effort to shield themselves from additional liability in the current fire season, PG&E and other investor-owned utilities in California have made the decision to proactively shut off power to millions of residents in fire-prone areas during times of high fire risk.

The impact of such power outages are broad in scope, affecting hospitals, disabled and ill homebound individuals, hundreds of thousands of students whose schools temporarily close, and the parents of students who are compelled to take time off from work to care for children whose classes have been cancelled.

What is Inverse Condemnation

Three investor-owned utilities provide gas and electric service to more than 25 million of California's approximately 40 million residents.¹

Under the doctrine of inverse condemnation, the state has imposed strict liability on those privately-owned utilities for damage to private property as a result of a wildfire if it is found that their facilities were the source of the fire.²

Inverse condemnation is the flip side of eminent domain. It is rooted in the Fifth and Fourteenth Amendments of the United States Constitution, which gives a government agency the authority to seize private property for the benefit of the public so long as the property owner is fairly compensated.

However, unlike a government agency with authority to tax and therefore spread costs of liability, privately owned utility companies in California may only raise rates with the blessing of the California Public Utilities Commission (CPUC), given only if the utility seeking to recover costs can establish that it reasonably and prudently operated and managed its facilities.³

As the CPUC has become less inclined to allow fire costs to be passed along to ratepayers,⁴ they are still left holding the proverbial bag as they deal with the social, economic, and other impacts of mass power outages.

An examination of inverse condemnation reveals why California law mandates applying strict liability to private utility companies for damages under these circumstances, and why any immediate change of the status quo is unlikely, despite the seemingly precarious situation of utility companies facing bankruptcy.

Inverse Condemnation and Strict Liability

The Fifth Amendment of the United States Constitution provides in pertinent part that, "No person shall...be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."⁵

The Due Process clause of the Fourteenth Amendment likewise provides that, "No State shall...deprive any person of life, liberty or property, without due process of law."⁶

The California Constitution expands on these protections, providing that, "Private property may be taken or damaged for public use only...when just compensation...has first been paid to, or into court for, the owner."⁷

These federal and state constitutional provisions not only provide the basis for the state's power of eminent domain, which allows a government agency to acquire property outright so long as compensation is paid, but, in addition, the basis for the lesser known doctrine of inverse condemnation.

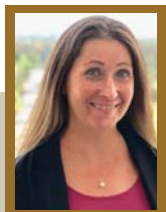
The courts have explained that inverse condemnation comes into play, "When a public use results in damage to private property without having been preceded by just compensation, the property owner may proceed against the public entity to recover it. Such a cause of action is denominated inverse condemnation."⁸

Early inverse condemnation cases presumed that a public entity could only be found liable for an injury if a private party could be found liable for the same injury.⁹

However, in *Albers v. County of Los Angeles*, the California Supreme Court explained that the Constitutional provision actually provides a broad basis for governmental liability.

The fundamental policy basis for the constitutional requirement of just compensation, the Court found, "is a consideration of 'whether the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking.'"¹⁰

The only requirements for a claim of inverse condemnation are that "the injuries must be physical injuries of real property, and the injuries must have been proximately



Alicia B. Bartley is an attorney at Gaines & Stacey LLP in Encino. The firm specializes in land use, zoning, environmental law and related litigation. She can be reached at abartley@gaineslaw.com.

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caused by the public improvement as deliberately constructed and planned," whether foreseeable or not.¹¹

The *Albers* court left open two exceptions to the rule that the inverse condemnation plaintiff was entitled to compensation without regard to fault—first, the *Gray* exception does not require compensation for damage inflicted in the proper exercise of police power.¹²

In *Gray v. Reclamation Dist. No. 1500*, the California Supreme Court found that the raising of a floodplain in a reclamation project that temporarily flooded the plaintiff's lands was completed under a legitimate exercise of police power, and while the plaintiff's did suffer injury, such injury did not constitute a taking of property under the California Constitution.¹³

Second, the *Archer* exception does not require compensation for damage caused by an upper riparian government landowner taking action to protect its own property.¹⁴

The *Archer* exception was modified by *Locklin v. City of Lafayette*, which applied a test of reasonableness to both public and private landowners.

"We also conclude that a governmental entity may be liable under the principles of inverse condemnation for downstream damage caused by an increased volume or velocity of surface waters discharged into a natural watercourse from public works or improvements on publicly owned land," the Court said in that case. "It will be liable if it fails to use reasonably available, less injurious alternatives, or if it has incorporated the watercourse into a public drainage system or otherwise converted the watercourse itself into a public work."

Compensation, the Court said, "is compelled by the same constitutional principles which mandate compensation in inverse condemnation actions generally," adding that "the downstream owner may not be compelled to accept a disproportionate share of the burden of improvements undertaken for the benefit of the public at large. Because downstream riparian property is burdened by the servitude created by the natural watercourse rule, however, consistent with that rule the downstream owner must take reasonable measures to protect his property. Liability on an inverse condemnation theory will not be imposed if the owner has not done so."¹⁵

As such, unless one of the two exceptions discussed above apply, all a plaintiff need establish in an action for inverse condemnation is a causal relationship between the government's activity and the alleged property loss or damage.¹⁶

If such factors are established, the governmental agency is liable for the damages suffered by the plaintiff, regardless of whether the government agency's conduct was negligent.

Private Utility or Governmental Agency

Governmental liability for inverse condemnation under the principles discussed above is considered settled law in California.

However, why are private utilities such as PG&E, Southern California Edison (SCE) and San Diego Gas & Electric Co. (SDG&E) treated as government agencies for purposes of wildfire liability?

In *Barham v. Southern Cal. Edison Co.*, the Court of Appeal examined this issue and noted that Public Utilities Code § 612 gives electrical companies the power of condemnation over property necessary for the construction and maintenance of its facilities.¹⁷

Because investor-owned utilities are given broad powers to construct, maintain, and operate their electrical facilities for the public use by statute, the Court determined that inverse condemnation does apply.¹⁸

The Court further noted that applying inverse condemnation to private utilities under the circumstances of the case was consistent with the fundamental policy underlying the concept of inverse condemnation, which “is to spread among the benefiting community any burden disproportionately borne by a member of that community, to establish a public undertaking for the benefit of all.”¹⁹

In response to SCE’s argument that inverse condemnation should not apply because it is privately owned and not a public entity, the Court noted that the California Supreme Court has previously held that a public utility is, in many respects, more akin to a governmental entity than to a private company.²⁰

In *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.*, the court held that a public utility company was subject to the Constitution’s equal protection guarantee when hiring employees, finding that “the nature of California’s regulatory scheme demonstrates that the state expects a public utility to conduct its affairs more like a governmental entity than like a private corporation.”²¹

After determining that SCE is a public entity for purposes of the plaintiff’s inverse condemnation claim, the court analyzed whether the plaintiff’s property was damaged for a public use. SCE had asserted that because it owned the land upon which the electrical transmission facility where the fire originated was located, the use was private.²²

The Court rejected that claim, citing to evidence that the circuit of which the subject facilities were a part provides electric service to more than 1,000 households.²³ “[W]e must conclude that the transmission of electric power through the facilities that caused damage to the [plaintiff’s] property was for the benefit of the public, the Court said.²⁴

More recently, in *Pacific Bell Telephone Co. v. Southern California Edison Co.*, the SCE challenged the *Barham* court’s finding that a private utility could be held liable in inverse condemnation.²⁵ In rejecting SCE’s challenge, the Court emphasized that “a public utility’s monopolistic or quasi monopolistic authority...derives directly from its exclusive franchise by the state,” adding that “the happenstance of which type of utility operates in an area should [not] foreclose a property owner’s right to just compensation...”²⁶



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SCE additionally challenged the applicability of strict liability in the case, arguing that the reasonableness rule of *Locklin v. City of Lafayette* should instead apply.²⁷

The court rejected this argument as well, finding that “there is no indication from [Locklin and the flood control cases that followed] that the Supreme Court intended to replace the strict liability standard in inverse condemnation cases with a reasonableness test outside of the flood control context.”²⁸

It stated that, “The language of the flood control cases highlights the unique policy concerns relevant to a ‘common enemy’ or natural disaster that threatens property even without the existence of a public improvement. In contrast, here it is the public improvement, not nature that creates the risk of disaster.”²⁹

The court also suggested that a utility would remain liable under inverse condemnation principles even if a utility would not necessarily be able to spread all resulting costs among ratepayers.³⁰

Neither *Barham* nor *Pacific Bell Telephone Co.* have been reviewed by the California Supreme Court, and SDG&E’s recent Petition for Writ of Certiorari filed with the U.S. Supreme Court requesting review of inverse condemnation liability on privately owned utilities was denied.³¹

Interestingly, the question presented by SDG&E in the Petition was, “Whether it is an uncompensated taking for public use in violation of the Fifth and Fourteenth Amendments for a State to impose strict liability for inverse condemnation on a privately owned utility without insuring that the cost of that liability is spread to the benefitted rate payers.”³²

In other words, private utilities are now asserting that because they have no guaranteed ability to spread damages they are forced to pay as a result of wildfire damage claims, the application of inverse condemnation to such private utilities constitutes an unlawful taking of private property.

While the U.S. Supreme Court declined to hear the case, PG&E attempted to pursue this same argument in its bankruptcy proceedings.³³

The bankruptcy court soundly rejected the argument, primarily because even though PG&E could not pass on costs automatically, it hasn’t shown that it would be denied a rate increase by the California Public Utilities Commission.³⁴

As such, for at least the foreseeable future, controlling case law provides that the state’s private utilities will remain strictly liable for wildfire damages where their electrical utility equipment was a substantial cause of the fire.


Maintaining the Status Quo

Achieving no traction with the courts, investor-owned utilities have made efforts to convince the California legislature to eliminate inverse condemnation liability for wildfire damages.

In July 2018, then California Governor Jerry Brown released a proposal that would have effectively done so.

However, after hearings and testimony, the resulting bill—S.B. 901, which was signed into law in September 2018—included no changes to inverse condemnation or the liability standard.³⁵

Since the passage of S.B. 901, the Commission on Catastrophic Wildfire Cost and Recovery finalized a report recommending the replacement of the strict liability standard of inverse condemnation with a fault-based negligence standard.³⁶

While the governor and lawmakers have acknowledged that additional changes in the law may be necessary, it appears that until the legislature acts, Californians will have no choice but to endure wide-spread, so-called Public Safety Power Outages during times of high fire risk.³⁷ 

¹ Pac. Gas & Elec, *Company Profile* (2019), www.pge.com/en_US/about-pge/company-information/profile/profile.page; S. Cal. Edison, *Who We Are* (2019), www.sce.com/wps/portal/home/about-us/who-we-are; San Diego Gas & Elec, *Our Company* (2019), www.sdge.com/more-information/our-company.

² See *Barham v. Southern Cal. Edison Co.* (1999) 74 Cal.App.4th 744, 754.

³ California Public Utilities Code § 451.

⁴ See, e.g., *San Diego Gas & Elec. Co. v. California Public Utilities Commission* (2018), Court of Appeal of California, Fourth Appellate District, Division One, Case No. D074417.

⁵ U.S. Const, amend V.

⁶ U.S. Const, amend XIV, § 1.

⁷ Cal. Const. Art. I, § 19.

⁸ *Arreola v. County of Monterey* (2002) 99 Cal.App.4th 722, 737.

⁹ *Archer v. City of Los Angeles* (1941) 19 Cal.2d 19, 24.

¹⁰ *Id.*, at 50, citing *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 262.

¹¹ *Id.*, at 50, citing *Holtz v. Superior Court* (1970) 3 Cal.3d 296, 304.

¹² *Albers*, 62 Cal.2d at 262.

¹³ *Gray v. Reclamation Dist. No. 1500* (1917) 174 Cal. 622, 642.

¹⁴ *Albers*, 62 Cal.2d at 262.

¹⁵ *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 337-338.

¹⁶ *Marshall v. Department of Water and Power* (1990) 219 Cal.App.3d 1124, 1138-39.

¹⁷ *Barham v. Southern Cal. Edison Co.* (1999) 74 Cal.App.3d 744, 752.

¹⁸ *Id.*

¹⁹ *Id.*, citing *Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 558.

²⁰ *Id.*, at 753, citing *Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 469.

²¹ *Id.*

²² *Id.*, at 753-754.

²³ *Id.*, at 754.

²⁴ *Id.*, citing *Slemons v. Southern Cal. Edison* (1967) 252 Cal.App.2d 1022, 1026

[electric transmission lines to three customers was a public use].

²⁵ *Pacific Bell Telephone Co. v. Southern California Edison Co.* (2012) 208 Cal. App.4th 1400, 1404.

²⁶ *Id.*, at 1406, 1408.

²⁷ *Id.*, at 1408.

²⁸ *Id.*, at 1410.

²⁹ *Id.*

³⁰ *Id.*, at 573 n.6.

³¹ *San Diego Gas & Electric Company v. California Public Utilities Commission*, No. 18-1368 (U.S. Sup. Ct. 2019).

³² *Id.*, Petition for Writ of Certiorari (April 30, 2019).

³³ Forbes, *How the Future of California's Power Grid Hangs on the Constitutionality of 'Inverse Condemnation'* (October 30, 2019), <https://www.forbes.com/sites/christopherhelman/2019/10/30/how-the-future-of-californias-power-grid-hangs-on-the-constitutionality-of-inverse-condemnation/#5fc326ce7159>.

³⁴ Memorandum Decision on Inverse Condemnation, *In re PG&E Corp.*, No. 19-20077-DM (Bankr. N.D. Cal. Nov. 27, 2019).

³⁵ JD Supra, *Governor Brown Signs SB 901, Addressing Wildfire Cost Recovery, But Ignoring Inverse Condemnation Liability* (Sept. 24, 2018), <https://www.jdsupra.com/legalnews/governor-brown-signs-sb-901-addressing-12208/>.

³⁶ Commission on Catastrophic Wildfire & Cost Recovery, *Final Report of the Commission on Catastrophic Wildfire and Cost Recovery* 6-8 (June 17, 2019), http://opr.ca.gov/docs/20190618-Commission_on_Catastrophic_Wildfire_Report_FINAL_for_transmittal.pdf.

³⁷ Office of Governor Newsom, *Governor, Senate President pro Tem and Speaker of the Assembly Statement on SB 901 Commission Report* (May 29, 2019), <https://www.gov.ca.gov/2019/05/29/statement-on-sb-901-commission-report/>.

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1. An investor-owned electrical company may not be held liable for private property damage caused by its facilities if it can prove that it was not negligent.
☐ True ☐ False
2. A cause of action for inverse condemnation may only be stated against governmental agencies.
☐ True ☐ False
3. A governmental agency is not liable in inverse condemnation for damage to private property caused by the police in pursuit of a criminal suspect.
☐ True ☐ False
4. A governmental agency may only be found liable for injury or damage to private property if a private party could be found liable for the same injury.
☐ True ☐ False
5. The California Supreme Court has held that private utilities may be liable in inverse condemnation for property damage caused by its facilities.
☐ True ☐ False
6. In California, private electrical companies have the power of eminent domain.
☐ True ☐ False
7. If a governmental agency damages private property without paying just compensation, the doctrine of inverse condemnation may provide an avenue for the property owner to recover damages.
☐ True ☐ False
8. There are no exceptions to the strict liability standard where private property is damaged by a governmental agency for a public use.
☐ True ☐ False
9. The right of a governmental agency to acquire private property, without the owner's consent, for public use in exchange for just compensation is referred to as inverse condemnation.
☐ True ☐ False
10. California's inverse condemnation liability results in a taking of PG&E's property to transfer to victims of wildfires without just compensation.
☐ True ☐ False
11. A taking of property for which compensation must be paid does not require an actual physical taking.
☐ True ☐ False
12. An eminent domain case is initiated by a private property owner.
☐ True ☐ False
13. Condemning private property for the transmission of electrical power is a public use.
☐ True ☐ False
14. Private utilities may be held liable in inverse condemnation for wildfire damage where the cause and origin of a wildfire is unknown.
☐ True ☐ False
15. Damages resulting from wildfires are treated the same as damages caused by flooding for purposes of recovery under the doctrine of inverse condemnation.
☐ True ☐ False
16. When a utility designs the physical structure or operation of a system and when the intended use and design of that system causes a fire, inverse condemnation applies.
☐ True ☐ False
17. The Fifth Amendment of the United States Constitution requires payment of just compensation if private property is taken for the public use.
☐ True ☐ False
18. To prevail on a claim of inverse condemnation against a utility for damage to real property, the injury must be physical in nature.
☐ True ☐ False
19. In *Locklin v. City of Lafayette*, the California Supreme Court held that an inverse condemnation plaintiff was entitled to compensation without regard to an upper riparian public landowner's fault.
☐ True ☐ False
20. The ability to spread losses among ratepayers is a key factor in California courts holding private utilities liable in inverse condemnation.
☐ True ☐ False

MCLE Answer Sheet No. 135

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1. Accurately complete this form.
2. Study the MCLE article in this issue.
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California Employment Laws: What's New for 2020

By Nicole Kamm and Hannah Sweiss

Employment laws are often nuanced and constantly change. It is important for employers doing business in California to keep a finger on the pulse of employment law and consult with experienced employment counsel to navigate through the ever-changing employment laws.





AFTER A BUSY FIRST YEAR in office, Governor Gavin Newsom welcomes California employers into a new decade with a wave of major pieces of legislation impacting employers across the Golden State.

Changes include a ban on mandatory arbitration agreements, an overhaul of the rules for independent contractors, restrictions on the use of no-hire provisions in settlement agreements, among others.

Though what follows is not an exhaustive summary of the new employment laws, this article provides an overview of some of the most significant legislation, as well as a few recent cases that alter the employment law landscape.

Unless otherwise noted, the laws discussed below took effect on January 1, 2020.

AB 5/AB 170 (Independent Contractors)

A highly controversial piece of legislation, AB 5 codifies and broadens the so-called ABC Test, which was adopted by the California Supreme Court in its 2018 *Dynamex Operations v. Superior Court* decision and determined whether workers should be classified as independent contractors or employees for purposes of claims brought under the California wage orders.¹

To satisfy the ABC Test, the hiring entity must establish each of the following factors:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

- The worker performs work that is outside the usual course of the hiring entity's business; and,
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.²

AB 5 contains multiple industry exemptions, exceptions and carve-outs, most of which have numerous specific requirements.³

AB 170 adds an additional exemption for newspaper distributors working under contract with a newspaper publisher and a newspaper carrier working under contract either with a newspaper publisher or a newspaper distributor.⁴

Recommendations: Companies should carefully analyze their workforce and reclassify workers as appropriate. Independent contractor agreements should be edited and updated to reflect the requirements of AB 5. Note that the AB 170 exemption will expire January 1, 2021.⁵

AB 51 (Arbitration Agreements)

Despite past vetoes, AB 51 was signed into law, prohibiting employers from requiring mandatory arbitration agreements for nearly all types of employment claims.⁶

While there is question whether the statute is preempted by federal law and legal challenges are likely, as of now, the bill adds a new Labor Code section prohibiting any person, including employers, from requiring an applicant or employee, as a condition of employment, continued employment, or receipt of any employment-related benefit, to "waive any right, forum or procedure" for alleged violations of the Fair Employment and Housing Act (FEHA) and the Labor Code.⁷

While AB 51 appears to apply only to mandatory arbitration clauses, language in the bill also prohibits employers from using voluntary opt-out clauses to attempt to circumvent the restrictions.

The bill also creates a new private right of action under FEHA for any violation of AB 51.⁸

AB 51 applies to contracts entered into, modified, or extended on or after January 1, 2020.

Recommendations: Existing arbitration agreements and the implementation of such agreements should be reviewed and revised as necessary.

AB 83 (Expanded Paid Family Leave Benefits)

AB 83 increases the maximum duration of Paid Family Leave (PFL) benefits an individual may receive from California's State Disability Insurance program from six to eight weeks.⁹

Benefits for this purpose may be used when taking leave to care for a family member with a serious health condition, to bond with a new child, or for qualifying exigency leave for military spouses.¹⁰

Recommendations: Revise any policies as appropriate and update pamphlets and other informational materials when available.

AB 707 (Failure to Timely Pay Arbitration Fees)

AB 707 further raises the stakes for employers in handling arbitration claims.¹¹

Under the bill, a drafting party—for example, the company or business that included a pre-dispute arbitration provision in a contract with an employee or consumer—that fails to pay the fees necessary to commence or continue arbitration within 30 days after such fees are due is held to have materially breached the agreement and is in default.¹²



Nicole Kamm and Hannah Sweiss are employment defense attorneys with Fisher Phillips, a national law firm exclusively dedicated to representing employers. Nicole Kamm can be reached at nkamm@fisherphillips.com; Hannah Sweiss can be reached at hsweiss@fisherphillips.com.

The potential consequences are significant and include not being able to compel the claim to arbitration, as well as potential monetary and evidentiary sanctions.¹³

Recommendations: Companies affected are advised to promptly calendar due dates and ensure timely payment of arbitration fees following a demand for arbitration, whether by employer or employee.

AB 749 (No-Rehire Provisions)

Settlement agreements may no longer contain provisions that prohibit, prevent or otherwise restrict an employee from obtaining future employment with that employer, or any parent company, subsidiary, division, affiliate or contractor.¹⁴

This prohibition will only apply to no-hire provisions in agreements between employers and an aggrieved person, that is, an individual who has filed a claim against their employer either in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer's internal complaint process.¹⁵

Based on that definition, standard severance agreements may still contain no-rehire provisions, so long as the severance is not offered as settlement of an employment dispute and the employee has not filed a claim against the employer.¹⁶

The new law includes several exceptions such as not precluding employers from agreeing to end a current employment relationship with an aggrieved person. It also does not require employers to continue to employ or rehire a person if there is a legitimate non-discriminatory or non-retaliatory reason for terminating the employment relationship or the employer made a good faith determination that the aggrieved individual engaged in sexual harassment or sexual assault.¹⁷

Recommendations: It is advisable to review settlement agreements and revise as necessary to comply with the legislation.

Also, consider including a question on the employment application inquiring if applicant ever worked for the company before, and, if so, review the person's prior employment history. Consider including language into settlement agreements referencing exceptions, such as legitimate non-discriminatory or non-retaliatory reasons.

AB 9 (Statute of Limitations Extended for FEHA Claims)

Under prior law, employees had one year to file an administrative charge—or exhaust administrative remedies—with the California Department of Fair Employment and Housing (DFEH).¹⁸

AB 9 extends the administrative filing period to three years.¹⁹ Employees then have an additional year after receipt of a Right to Sue letter from the DFEH to file a civil action in court, thereby extending the timeframe employers could face such claims up to four years from the original filing.²⁰

Recommendations: Review employment-related policies and practices, evaluate recordkeeping and documentation practices, and ensure document retention, including emails and other electronically-transmitted information, for at least four years from the employee's separation.

SB 142 (Lactation Accommodation)

SB 142 requires employers to provide a private space other than a bathroom for employees to express breast milk.

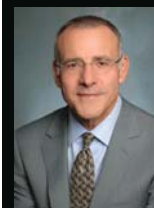
According to the new law, the space must:

- Be in close proximity to a work area shielded from view that is free from intrusion while the employee is expressing milk;
- Be safe, clean and free from hazardous materials
- Be equipped with a surface to place a breast pump and personal items and a place to sit
- Have access to electricity or alternative devices, including



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extension cords or charging stations²¹

Employers must also provide access to a sink with running water and a refrigerator or other type of cooler.²²

There are special rules for agricultural employers and employers with less than 50 employees may apply for an undue hardship exemption.²³

Denial of reasonable break time or adequate space to express milk is deemed a failure to provide a rest break in violation of Labor Code section 226.7, which would entitle the employee to an additional hour of pay at the employee's regular rate of hourly compensation.²⁴

Recommendations: Companies should ensure lactation space meets requirements and implement written lactation policy provided on hire and at time of accommodation request. Evaluate if special rules or exemptions may apply.

AB 25 (CCPA Amendment)

The California Consumer Privacy

Act (CCPA) is a comprehensive data protection regulation which requires certain covered businesses meeting a certain revenue threshold or other criteria to implement policies and procedures that provide consumers, including employees, certain privacy rights not previously available under existing law.²⁵

Covered businesses subject to the CCPA are those for-profit businesses that do business in California, collect the personal information of consumers including employees, and satisfy any of the following three criteria:

- Have annual gross revenues over \$25 million; or,
- Annually receive, sell, or share personal information about more than 50,000 or more California residents or households or 50,000 devices; or,
- Derive 50 percent or more of their annual revenue from selling personal information of consumers.²⁶

AB 25 postpones, until January 1, 2021, all the CCPA's requirements pertaining to employee data, save two—first, reasonable security measures to safeguard the data and, second, the disclosure of the categories of personal information collected about employees and job applicants and the business purposes for which the information is used.²⁷

Recommendations: Even though the enforcement of AB 25 by the California Attorney General is not activated until July 1, 2020, employers doing business in California should immediately consider whether the CCPA applies to them and if it does, determine the steps necessary to take to comply.

AB 1223 (Extends Organ Donor Leave Obligations)

State law now requires employers with 15 or more employees to provide employees 30 business days of paid leave in a one-year period for the purpose of donating an organ to another person.²⁸

Employers are also required to provide bone marrow donors with five business days of paid leave.²⁹

AB 1223 also expands the protection for organ donation by requiring employers to provide an additional unpaid leave of absence of up to 30 business days per year.³⁰

Employees may still be required to provide written verification of participation in either organ donation or bone marrow donation and include that the procedure is medically necessary.³¹

Employers may also require employees to use up to two weeks of accrued PTO, vacation or sick leave.³²

Recommendations: Review and update existing policies to address this change in the law.

SB 188 (CROWN Act)

The CROWN (Create a Respectful and Open Workplace for Natural Hair) Act prohibits employers from discriminating based on protective hairstyles, which are defined as "braids, locks, and twists."³³



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Comments from the bill note the intention of the new law is to eliminate possible discrimination against a person because of the historical traits associated with race, including hair texture.³⁴

Recommendations: Company management should review and update existing policies, including dress code and appearance standards policies.

AB 83 (Expanded Paid Family Leave Benefits)

AB 83 increases the maximum duration of Paid Family Leave (PFL) benefits an individual may receive from California's State Disability Insurance program from six to eight weeks.³⁵

Benefits for this purpose may be used when taking leave to care for a family member with a serious health condition, to bond with a new child, or for qualifying exigency leave for military spouses.³⁶

Recommendations: Existing policies should be revised as appropriate and literature for distribution to employees should be updated when available.

SB 778 (Deadline to Comply with Harassment Prevention Training Extended)

SB 778 amends and extends the sexual harassment prevention training compliance deadline under SB 1342, which expanded training requirements for employers with five or more employees and added the requirement to provide one hour of training to non-supervisory employees.³⁷

Most employers now have until January 1, 2021, to provide mandatory training to all employees and are required to provide training once every two years thereafter.³⁸

SB 778 further provides that employers who have already completed the required training in 2019 need not conduct additional training by January 2021, but instead comply within the two-year timeframe.³⁹

Recommendations: Ensure employees are provided at least one-

hour and supervisors are provided at least two hours of required training by January 1, 2021.

California Minimum Wage/FLSA White Collar Exemptions

California's minimum wage increased on January 1, 2020. Employers with 25 or fewer employees, minimum wage is \$12.00 per hour, while the minimum wage for employers with 26 or more employees is \$13.00 per hour.^{40 41}

The increase in the state minimum wage raises the minimum salary threshold for certain exempt employees—for example, executive, administrative or professional.⁴²

For employers with 25 or fewer employees, the minimum salary for such exempt employees is \$49,920, and the minimum salary for employers with 26 or more employees is \$54,080.

Effective January 1, 2020, the minimum annual salary to qualify for exempt status under the Fair Labor Standards Act's (FLSA) executive, administrative and professional exemptions is increasing to \$35,568.⁴³ The minimum compensation for those affected by the highly compensated exemption will increase to \$107,432.⁴⁴


Contrary to state law, non-discretionary bonuses, incentives and commissions may be included to meet these minimums, subject to certain limitations.⁴⁵

Recommendations: California employers should consider whether any local city/county minimum wage ordinances apply and ensure compliance with applicable minimum wage and exempt salary requirements.

The minimum salary for exempt status under state law is higher than federal law and must be met. At the same time, California does not recognize a highly-compensated employee exemption.

Significant Judicial Decisions

- In *OTO, LLC v. Kho*, the California Supreme Court refused to enforce an auto dealer arbitration agreement with



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a former service mechanic employee, holding it was unconscionable.⁴⁶

Three years into his employment, the plaintiff was asked to sign an arbitration agreement.⁴⁷

The low-level employee that presented the agreement to the plaintiff, stood by the plaintiff's work bay waiting for him to sign it on the spot.⁴⁸

After the plaintiff's employment ended, he filed a wage claim with the Labor Commissioner.⁴⁹ The employer filed a motion to stay and enforce the arbitration agreement and did not attend the Labor Commissioner hearing.⁵⁰

The employee was awarded \$150,000 and the employer appealed the case to the Superior Court which found the agreement to be unconscionable.⁵¹ After the case was appealed and reversed, ultimately, the California Supreme Court struck down the arbitration agreement as both procedurally and substantively unconscionable.⁵²

To invalidate an arbitration agreement on the basis of unconscionability, there must be a showing of both procedural and substantive unconscionability.⁵³

The Court found procedural unconscionability in *OTO, LLC v. Kho* for several reasons. For example, the agreement appeared in a single paragraph of small 8.5 point font with complex sentences and legal jargon; the agreement was presented by a low-level employee who waited by the plaintiff's work bay to review and return it on the spot; and the plaintiff did not have time to read or consider the agreement or ask questions.

In addition, no copy was provided; the agreement was not clear as to who would pay for the arbitrator; and the agreement did not explain how to bring a dispute to arbitration.⁵⁴

Interestingly, the Court held the agreement to be substantively unconscionable, but only in light of the "unusually high degree" of procedural unconscionability already present.⁵⁵

After *OTO, LLC v. Kho* and passage of AB 51, employers should review and revise arbitration agreements and the implementation process of such agreements to avoid any provisions or processes that might suggest procedural or substantive unconscionability.

- In a welcomed decision by employers, *Naranjo v. Spectrum Sec. Servs., Inc.*, the California Court of Appeal ruled that actions to recover unpaid meal period premiums under Labor Code section 226.7 alone does not entitle employees to derivative penalties under Labor Code section 203 (waiting time penalties) or section 226 (inaccurate wage statements).⁵⁶

It is important to note that the application of the case is narrow and only applies when an employer fails to pay a 226.7 premium payment, but otherwise pays the employee for all time worked during the meal period (e.g., on-duty meal).⁵⁷

Noted by the Court, where employees work through all or part of an "off-duty" meal, the employee generally has not been paid for that time and will likely still be entitled to bring the derivative claims under Labor Code sections 203 and 226 for unpaid wages.⁵⁸


- On October 9, 2019, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Court of Appeal weighed in on whether meal and rest period premiums paid at the employee's regular rate of compensation is the same rate as the employee's regular rate of pay for calculating overtime premiums.⁵⁹

The Court held that the regular rate of compensation for meal and rest breaks is not the same as the regular rate of pay for overtime.⁶⁰

The regular rate of compensation for meal and rest period premiums means the employee's hourly base rate of compensation which does not include other forms of remuneration normally included in the employee's regular rate

of pay for overtime purposes, such as non-discretionary bonuses.⁶¹

Be Situationally Aware

Though we end on a positive note, employment laws are often nuanced and constantly change. It is important for employers doing business in California to keep a finger on the pulse of employment law and consult with experienced employment counsel to navigate through the ever-changing employment laws. 

¹ Assem. Bill 5, 2019-2020, Ch. 296.

² *Id.*

³ *Id.*

⁴ Assem. Bill 170, 2019-2020, Ch. 415.

⁵ *Id.*

⁶ Assem. Bill 51, 2019-2020, Ch. 711.

⁷ *Id.*

⁸ *Id.*

⁹ Assem. Bill 83, 2019-2020.

¹⁰ *Id.*

¹¹ Assem. Bill 707, 2019-2020, Ch. 870.

¹² *Id.*

¹³ *Id.*

¹⁴ Assem. Bill 749, 2019-2020, Ch. 808.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Assem. Bill 9, 2019-2020, Ch. 709.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Sen. Bill 142, 2019-2020, Ch. 720.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Assem. Bill 25, 2019-2020, Ch. 763.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Assem. Bill 1223, 2019-2020, Ch. 316.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Sen. Bill 188, 2019-2020, Ch. 58.

³⁴ *Id.*

³⁵ Assem. Bill 83, 2019-2020.

³⁶ *Id.*

³⁷ Sen. Bill 778, 2019-2020, Ch. 215.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Sen. Bill 3, 2015-2016, Ch. 24.

⁴¹ *Id.*

⁴² *Id.*

⁴³ 84 FR 51230.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *OTO, LLC v. Kho*, 8 Cal.5th 111 (2019).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444 (2019).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019).

⁶⁰ *Id.*

⁶¹ *Id.*

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By Barry P. Goldberg

Attorney Referral Services: A Burning Issue

Jackson v. LegalMatch.com

THE CALIFORNIA SUPREME COURT HAS recognized that the statutory regulation of solicitation satisfies important interests relating to consumer protection and attorney professionalism.¹

The San Fernando Valley Bar Association (SFVBA) operates its Attorney Referral Service (ARS) to refer potential new clients to well qualified, local lawyers in particular areas of expertise that are required for both consumer protection and the highest degree of attorney professionalism.

The ARS team consists of full-time professional staff who are trained to identify the legal area required and to make a referral to a pre-screened and highly qualified attorney.

The Real Deal

It takes more than mere payment to be on the ARS referral panel of lawyers as panelists must qualify in their particular field based on criteria developed from time to time by the SFVBA's ARS Committee.

For example, having a certain number of trials for litigation areas or handling a certain number of cases from start to finish. In addition, ARS panel lawyers must maintain sufficient malpractice insurance and have a stellar disciplinary record with the California State Bar.

ARS panel lawyers pay a relatively small yearly fee to be on the panel and then sign an agreement to pay the ARS 15 percent of the earned legal fees from any referral. The ARS

professional staff is charged with oversight of the process and monitoring compliance and the payment of the fees.

That is just the beginning. Qualified attorney referral services are overseen by the State Bar of California and are required to comply with very specific terms and regulations in order to assure that the public receives professional and competent representation.²

In addition, the Bar requires that a certain amount of the fees generated by a certified attorney referral service be for the benefit of the public through various outreach programs, services for the needy, and public education. The service must also reapply for recertification on an annual basis.

The Not-So Real Deal

In contrast with the SFVBA ARS, there other types of for-profit attorney marketing and lead services that contend that they are not technically attorney referral services and, thus, are outside the regulation and restrictions of the Business and Professions Code and the State Bar of California.

Indeed, some marketing services configure the transaction of pairing a potential new client with a lawyer in such a way as to potentially avoid regulation.

These numerous for-profit attorney marketing and referral-type services nonetheless match an attorney with an inquiry from a potential client needing legal services.



Barry P. Goldberg currently serves as President of the San Fernando Valley Bar Association. He is former Chair of the SFVBA ARS Committee. A personal injury attorney with offices in Woodland Hills, he can be reached at bpg@barrygoldberg.com.

The match is usually in the form of a lead that the for-profit service has harvested from internet advertising, and radio and television ads. Those in the marketing business have numerous ways of attracting potential leads. Some companies have well-established internet domains, while others utilize a Pay-Per-Click (PPC) formula that allows them to profitably sell the leads they acquire. Still other companies have figured out how to harvest social media leads.

Once the call or inquiry comes in, the so-called lead is then exchanged for money paid to the for-profit service by attorneys looking for more potential new clients.

The manner in which leads are exchanged are as broad as the creativity of the particular service. Sometimes the attorney pays a flat fee for a certain number of leads. Other times attorneys pay for each lead. Some are subscription services and others sell territories.

For those legitimate referral services, like the SFVBA's ARS, it has become a constant concern and point of contention that many of the other types of services are profiting illegally and without verifiable public benefit.

Legitimacy Defined

Section 6155 regulates entities that refer potential clients to attorneys. Subdivision (a)(1) provides that "[a]n individual, partnership, corporation, association, or any other entity shall not operate for the direct or indirect purpose, in whole or in part, of referring potential clients to attorneys, and no attorney shall accept a referral of such potential clients," unless "[t]he service is registered with the State Bar of California and, on July 1, 1988, is operated in conformity with minimum standards for a lawyer referral service established by the State Bar," or is operated in conformity with standards set by the Supreme Court.

Subdivision (h)(1) of Section 6155 provides that "[p]ermissible joint advertising, among other things, identifies by name the advertising attorneys or law firms whom the consumer of legal services may select and initiate contact with," while Subdivision (h)(2) states that "[c]ertifiable referral activity involves, among other things, some person or entity other than the consumer and advertising attorney or law firms which, in person, electronically, or otherwise, refers the consumer to an attorney or law firm not identified in the advertising."

A Battle Joined

A pitched battle has been brewing in the legal community background between certified attorney referral services and attorney marketing companies that sell leads for many years.

However, there has really been no significant enforcement that has made its way to public attention. It was simply not clear who was going to examine the problem and how section 6155 will be enforced.

In a very unlikely set of facts, section 6155 and certified attorney referral services is now before the courts.³

In *Jackson v. LegalMatch.com*, the burning issue was raised in a cross-complaint by a disgruntled attorney who refused to pay for his LegalMatch subscription contending that LegalMatch is operating an uncertified lawyer referral service in violation of section 6155. After a bench trial, the court rejected the attorney's argument, finding that LegalMatch does not engage in referral activity within the meaning of section 6155.

The Court of Appeal disagreed, reversed and remanded, holding that LegalMatch was indeed engaging in referral activity subject to section 6155. The case was remanded to determine whether the attorney acted with "unclean hands" in the underlying transaction.

The Court did an excellent job of summarizing LegalMatch's services, finding that:

"LegalMatch operates an online website, www.legalmatch.com, that connects individuals to lawyers. Individuals who utilize the service are invited to fill out an intake form with information about their legal issue. Users must select their specific geographic location and the legal category that relates to their issue, such as business litigation, family law, criminal defense, or intellectual property."

"Depending on the legal category selected, LegalMatch requests additional information from potential clients about

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issues 'prospective attorneys would like to hear.' However, responding to the requests for additional information is not mandatory, and the potential clients' answers can be 'gibberish.' Potential clients may also write a 'summary of [their] case,' but they are not required to do so. LegalMatch's website represents that this process is designed to mimic a 'lawyer . . . during an initial consultation.' Finally, individuals may require a lawyer with a minimum number of years of experience and designate a preferred method of payment.

"Potential clients are required to accept LegalMatch's terms and conditions before the intake process is completed. In its terms and conditions, LegalMatch represents that it 'does not screen or vouch for any of its users.'

Additionally, LegalMatch includes a disclaimer that it '[p]rovid[es] a service where potential clients and legal professionals can meet. [It d]oes not imply an endorsement of any subscribing attorney or service provider.'

"LegalMatch makes no representation concerning an attorney's qualifications, except the attorney was licensed to practice in at least one state at the time of registration nor does it sanction statements that an attorney may post on the system. LegalMatch makes no representations concerning the qualifications of non-attorney legal service providers. [A client's] case will not be reviewed by non-attorney legal service providers by consent. LegalMatch does not screen individual cases or otherwise channel potential clients to select attorneys.

"Once individuals have completed the intake process and accepted the terms and conditions, LegalMatch communicates the information collected during the intake process to lawyers who have subscribed to LegalMatch's service. Only subscribing lawyers associated with the geographic location and legal category selected by the potential client receive the information. LegalMatch sends information to lawyers based solely on the client's selection of geographic location and area of expertise.

"After the lawyers receive this information, each lawyer has the opportunity to affirmatively reach out to the individual. The lawyer must first utilize LegalMatch's platform to initiate contact with the potential client. Depending on the client's preferences, the potential client may choose to send contact information to the lawyer so that they may continue their discussion outside of the platform. Lawyers and clients

negotiate between themselves to determine the parameters of their attorney-client relationship.

"LegalMatch's business model relies on yearly or multi-year subscriptions that lawyers may purchase to receive LegalMatch's intake information.

"Each lawyer who purchases a subscription is slotted into a geographic location and category of legal expertise. The number of lawyers in a geographic location and category of legal expertise is limited by an algorithm (allocation system) that maintains LegalMatch's profitability by balancing the number of clients and lawyers available. For example, LegalMatch placed Jackson on a waiting list before he was accepted to the panel of subscribing lawyers for the category of wills, trusts, and estates.


"Potential clients may use the site for free, and LegalMatch receives no fee for the successful formation of an attorney-client relationship."

Without belaboring the procedural posture and legislative history provided in the decision itself, the Court of Appeal concluded that LegalMatch did engage in referral activity, stating that, "A referral occurs when an entity engages in the act of

directing or sending a potential client to an attorney. The act of referring is complete when LegalMatch routes a potential client to attorneys who match the geographic location and area of practice—regardless of whether LegalMatch exercises legal judgment on an individual's issue before communicating that information to lawyers on its panel."

The Court's simple conclusion is that "the act of sending the information to the selected lawyers constitutes and completes the referral" for purposes of section 6155 has broad application. It is not difficult for anyone who has been exposed to lawyer marketing to realize the conclusion from the LegalMatch case could be applied to many different lawyer advertising platforms who may be operating illegally and without proper oversight.

Selling "leads" to attorneys that can afford to pay—completely unregulated—begs the question: Is your attorney referral service legal?

Rest assured. The SFVBA Attorney Referral Service is fully compliant with California state law and State Bar regulations to maximize consumer protection, assure attorney professionalism, and provide the public with access to qualified, expert legal assistance. 



Rest assured.
The SFVBA Attorney
Referral Service is fully
compliant with California
state law and State
Bar regulations."

¹ *Kitsis v. State Bar* (1979) 23 Cal.3d 857, 864, 867.

² California Business and Professions Code, Section 6155.

³ *Jackson v. LegalMatch.com.*, Cal: Court of Appeal, 1st Appellate Dist., 4th Div. 2019.

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By Michael D. White

Overcoming Challenges: LACBA Looks to the Valley for Leadership



FOR THE FIRST TIME IN ITS 142 year history, the Los Angeles County Bar Association (LACBA)—one of the largest voluntary metropolitan bar associations in the country—is being led by two Valley-based attorneys, one of whom is a Past President of the San Fernando Valley Bar Association.

“When I was president of the SFVBA in 2008, the Los Angeles County Bar was very strongly centered in downtown Los Angeles and the big firms were very active,” says Tamila C. Jensen, who now serves as President-Elect of the 15,000 members. “It would have been very surprising if a couple of Valley lawyers from smaller firms were even considered for those positions.”

Jensen, whose solo Granada Hills practice focuses on elder law and real property, currently serves with LACBA President Ronald F. Brot, founding

senior partner at the family law firm of Brot-Gross-Fishbein, LLP in Encino and a longtime, active member of the SFVBA.

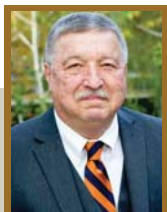
Both assumed their positions with LACBA on July 1, 2019, as the organization was digging out from a time when internal strife had damaged it to the point that, according to *Metropolitan News-Enterprise* co-publisher and attorney, Jo-Ann W. Grace, the Bar had been “alienating those who were members of the association based on kinship to one or more of its specialty sections, which were being regimented and ill-served.”

Grace made her comments about LACBA’s past the following September when the law-oriented newspaper

named Brot one of its “Persons of the Year.”

Grace said Brot “was one of the first to sound an alarm, initially unheeded, that LACBA was on the wrong track...There did, however, develop a wide awareness that Brot was right; a reform movement was formed and it gained offices in a contested election—the first in 25 years—in 2016.”

With “tact, inventiveness, and spirit, Brot is continuing and building upon the wise reform efforts of his immediate predecessors as president, Mike Meyer and Brian Kabateck, in the quest to return LACBA to fiscal soundness, responsiveness to members’ needs, and relevancy—and, as they did, he has made huge strides,” said Grace.



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.



Primary Challenges

What challenges remain? At the very top of the list is to attract young attorneys to join and become involved.

“Most Bar associations are facing the same issues and several studies conducted by the ABA confirm that,” says Jensen. “In 2009, when I was president of the SFVBA, the issues that the Bar faced were dealing with cash flow and coming up with ways to have a more diverse Bar. We were depending heavily on the larger firms, and there continues to be a large number of them in the Valley that have been very supportive of the Bar over the years.”

Those large, established firms, she says, “continue to be absolutely vital, but it’s equally critical that we do all we can to attract young attorneys by providing the kinds of benefits and services that attract younger lawyers.”

Brot—who holds both his undergraduate degree and J.D. from the University of Michigan—regularly attends meetings of the National Association of Bar Presidents where, he says, the subject of appealing to new lawyers “is raised every

time we meet. It’s only recently that I think the focus is on the wrong issue. I think there was a successful formula for the Bar that existed for more than 140 years.”

The model as to how the Bar was organized worked, but, he says, “as what we call ‘Big Law’ evolved, and as a new generation of younger lawyers with different goals and aspirations started their practices, the Bar failed to change. The Bar stayed what it was and how it was, and when numbers started to decline, it wasn’t responsive to the needs of its members.”

That situation, says Brot, “continued at LACBA until just the last few years when we saw that we really needed to be different to attract younger lawyers. In 2019, we reached out through a Task Force to reach out to the large firms, individuals, and the bar associations throughout the county, including the San Fernando Valley Bar Association, to find out what people expect from the Bars they are asked to join. Rather than a Bar telling a young lawyer, ‘This is what you need,’ we are reaching out to find out what they want.”

As a result, LACBA recently launched a new app that provides ready access to Bar resources and facilitates sign-up for events and programs on a cellphone.

“We’re also providing outreach and provide programs at various law schools, in particular at this point, Loyola,” says Jensen. “We have a very active young lawyers section that is led by young attorneys who try to design programs that are suitable and attractive to their fellows. Membership in that section is free for the first two years. That gives them the opportunity to take advantage of the benefits and participate. That gives them a foundation so that as they become more settled, they can move into other areas. I think we’ll be seeing more of that over the next couple of years.”

Jensen, a graduate of the University of California, Berkeley, earned her law degree from the University of California, Davis—School of Law and holds an LLM

in Transnational Commercial Practice from Lazarski University in Warsaw, Poland.

“When I started my practice in Fresno years ago, it was more social,” she says. “Then I practiced in Indiana for a while and then came back to Los Angeles. At that point, the firm I was with didn’t encourage us to participate in the Bar because they didn’t want what they felt were distractions from our spending time on legal work. There wasn’t much encouragement to attend Bar events or be active in other ways. None of that is nefarious or bad; it’s just the way it was. Today, I see that law firms are much more supportive of



“

Most Bar associations are facing the same issues and several studies conducted by the ABA confirm that.”

—Tamila C. Jensen

their younger attorneys getting involved and participating. It’s actually easier today for them to be involved and their firms see that because their senior lawyers see the value in it.”

The key to remember, says Brot, is that “new attorneys are not waiting for ten years of Bar membership before they get involved. They want to make more of an impact sooner than later. Their career horizon is much closer than ours ever was and I’m not so

sure that's a bad thing. They have an integrated view of their personal and professional lives and I think that's great."

His goal? "To see how we can play to that and add to their legal experience in a useful, positive way, rather than pushing them in some given direction."

What the Future Holds

Greater and more proactive cooperation with smaller bars such as SFVBA—a plan lacking in the past—is a major goal, says Jensen. "Our plan is to develop events that we can cosponsor and try, periodically, to have a LACBA program in the Valley that we can work together on. We want to provide opportunities for both our memberships to participate together."

In a unique locale like Los Angeles, she says, "there are a lot of competing opportunities; affinity bars are very active and very attractive. But, I think both LACBA and SFVBA will be around for a long time to come as they both flesh-out their roles, which may not be the same as they were 20 years ago, but are still relevant. I am amazed at the variety of experience and the wealth of opportunities that they offer. I think that though our membership levels may be slightly down and some programs may not be viable anymore, both will prosper."

Recalling his early days in the practice of law, Brot remembers entertaining the notion that "the Bar played a more prominent role in influencing how law was practiced, how core policies were formed, and how social justice was administered."

The size of the Bar, he says, "supported the perception that the Bar was part of the daily life of lawyers in Los Angeles and I think that over time, the Bar clung to that notion, when, in fact, it was like giving a party with music playing and there was nobody on the dance floor. The

Bar didn't listen closely to its members over the last ten or twenty years and so the prominence of the Bar in everyday life was diminished."

As a result, he says, "the size of the membership hasn't swelled in proportion to the increasing number of lawyers coming out of law school. But, despite all that, I have to say that, though the numbers aren't where we'd like them to be, there is more enthusiasm, energy and buzz in the County Bar than I've seen in the last ten years."



“

I'd like there to be a recognition that we can accomplish more together than what individuals can do alone."

—Ronald F. Brot

That upswing in energy is attributed, he adds, to the creation of several new sections and a new program to help attorneys dealing with the stresses inherent in the profession.

"We have a new Privacy and Cybersecurity Section and we're one of the first local bars in the country to have a Cannabis Section. We are seeing a lot of interest in our different practice sections creating networking opportunities. We've also rolled out a new Lawyer Assistance Program to help attorneys deal with the issues of

alcohol and drug addiction and mental health."


A Bridge to the Future

What does a career as a family attorney and a heritage of community service, passed down from his parents, do to prepare someone to head a group with the scope and breadth of the Los Angeles County Bar Association?

Family attorneys, Brot said in an earlier interview with *Valley Lawyer*, "have the opportunity to help people through what I feel is the darkest period in their lives. Some people say we deal with people when they're at their worst. I never say that. I feel we deal with people going through the worst, doing their best. We want to help our clients navigate their way through the situation they've found themselves in and that may not be pain-free, but, like going to the dentist, you endure what you have to and trust that it will work out in the end."

Over the years, he says, "I've learned to be a listener and, regardless of the emotions that have been swirling about, I need to make reasoned decisions. We have so many well-intentioned people in the Bar with so many different feelings and perspectives, you'd be surprised at the passion that our very-engaged Board brings to their work. I need to listen and I need to be empathetic with them as I would be with a client."

On the last day of his presidency, Brot says he would like to see "a reenergized organization comprised of members working collectively toward advancing their careers and better serving the disenfranchised members of our community."

"I'd like there to be a recognition that we can accomplish more together than what individuals can do alone. If we can help this new generation of lawyers find strength in numbers, a sense of communal purpose, and shared and individual satisfaction through the opportunities that are presented by our association, I will consider my time as president as a bridge to the future. I won't be so presumptuous to hope for anything greater." 

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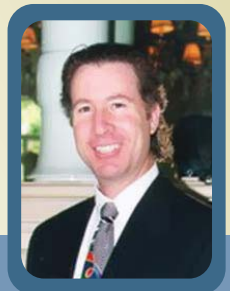


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April 17-18, 2020

By Kyle M. Ellis

A Worthy Effort: SFVBA Inaugural Mock Trial Competition

WHEN ASKED, JUST ABOUT anyone that participated in a mock trial competition team during law school is likely to say that it was the best experience they had in their three years.

The comradery of late nights preparing a case with coaches and teammates, the puzzle of strategy of what questions to ask and facts to bring out, and the thrill of competition on the day of the event made the experience hard to match.

But more than just being an intellectual, interpersonal, and emotional exercise, a mock trial competition team gives law students hands-on knowledge and competency in the work of preparing, prosecuting and arguing a case.

Knowing the value of trial experience for law students, the San Fernando Valley Bar Association (SFVBA) will host its inaugural mock trial competition on April 17-18, 2020. This event represents

an exciting new opportunity for our members to help the newest generation of attorneys learn the ins-and-outs of practicing their craft in a courtroom setting.

Moreover, the mock trial competition will further SFVBA's mission of fostering excellence in the legal profession; facilitating access to justice for all; supporting diversity and inclusion in the legal community; and educating and serving our members and our communities.

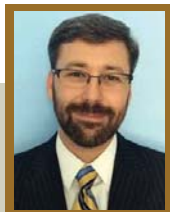
In addition, it will serve to support the ideal of a legal profession dedicated to professionalism, competence, and the ethical conduct of new attorneys.

A Humbler Goal

Of course, beyond the loftier goals of the competition is the more modest goal of fostering interest among law students in joining SFVBA or their local association if they end up practicing elsewhere.

As a subcommittee of the Bar's Membership and Marketing Committee, the Mock Trial Subcommittee believes that the Association's goals of service to the legal community and ensuring the continued success of our Association can, and must, move forward hand-in-hand. By working with law students directly through hosting a competition, the name and mission of the Association are passed on to the next crop of lawyers that will form the backbone of the Bar in just a few short years.

Taking advantage of our status as a regional bar association, we will be offering a unique trial experience to law schools throughout the state, by giving our lawyers-in-the-making the opportunity to engage directly with California case law, rather than restricting the competition to the federal level. To that end, we have been recruiting participants from all ABA- and California- accredited



SFVBA Trustee **Kyle M. Ellis** serves as a research attorney with the Los Angeles Superior Court. Last year, he was instrumental in organizing the SFVBA's highly-successful Candidates Forum, which gave the public the opportunity to appraise the candidates running for the Los Angeles City Council's District 12 seat. He can be reached at elliskylem@gmail.com.

law schools in the state and crafted an appropriate competition prompt based entirely on California civil litigation practice.

While the number of participants may change over the next few months, we already have ten competition teams committed to participating in this inaugural event.

The teams that are already aboard will receive the prompt this month with team members working on preparing for trial in a wrongful death action involving a police shootout in a mall, possible official misconduct, and a series of carefully crafted procedural and evidentiary challenges.

The goal will be to make the students consider the thorny issues of what information they want to admit into evidence, how to balance the potential benefit of a witness when weighed against the potential harm of the same witness, and to reflect on issues of official misconduct, police actions, and the vagaries that often come with challenging litigation.

There will be a total of four rounds over the course of the two-day trial competition, and teams of four students will have the opportunity to act as attorneys for both the plaintiff and the defense.

On the first day, April 17, students will work through two preliminary rounds, where all participating teams will have the opportunity to represent each side of the case. Results of the preliminary rounds and awards for individual competitors will be highlighted at a dinner hosted and sponsored by SFVBA members.


The second day will have four semifinalist teams squaring-off, and the two top teams will then conduct one final round in the afternoon. At the round's conclusion, the first and second place teams will receive their awards from the San Fernando Valley Bar Association.

The Mock Trial Subcommittee has been working under the auspices of the Membership and Marketing Committee

to host this event since fall 2018. Each member of the Subcommittee deserves praise for their tireless efforts, but none of it would have been possible without the full support of our Immediate Past President, Yi Sun Kim, and our current President Barry P. Goldberg.

To make the event a complete success, the Subcommittee needs your support and participation. We need SFVBA members to serve as volunteers and evaluators, as well as law firms to lend their financial support as sponsors, and judicial officers to take time out of their busy schedules to preside over the Mock Trial competition.

Your participation and support are critical to the success of our event, and both the Subcommittee and the student competitors are relying on the generosity of the members of SFVBA.

As we gear up for our inaugural competition, the Mock Trial Subcommittee is already looking forward to replicating the event in 2021. We welcome any member that is interested in participating in either the 2020 or 2021 events to attend any of the Subcommittee meetings, usually held on the third Monday of every month, and published in the calendar of events in *Valley Lawyer*. 



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VALLEY BAR NETWORK

VBN is dedicated to offering organized, high quality networking for SFVBA members.

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Exoneration

ONE OF THE MOST BENEFICIAL and effective services offered by the San Fernando Valley Bar Association is its Attorney Referral Service (ARS), which prides itself in serving the Valley community by providing access to legal assistance from highly skilled and specialized attorneys.

In a November 2019 news story that drew headlines across the country, a Los Angeles man—Ruben Martinez, Jr.—was exonerated after being imprisoned for 11 years after being convicted of a series of armed robberies that he did not commit.

It's with no small degree of pride that an active panelist of the ARS, attorney Angela Berry, served on the legal defense team that assisted in securing Martinez' release from prison.

Though that case was not directly referred by the ARS, it is a story that typifies the goal that is sought with every referral generated by our team and others that do similar legal work—a victory for justice.

The case reached Berry through the Criminal Division Writ's Center, which is overseen by Los Angeles Superior Court Judge William Ryan.

The Writs Center was created to serve the public much like the ARS. However, contrary to serving the general public, the Center provides legal assistance to offenders and their respective families either seeking an appeal, seeking an attorney to serve as a public defender, or both only after all other routes of appeal are exhausted.

Attorney Berry, herself, is no stranger to seeing that justice is done, as her involvement extends far beyond SFVBA and the ARS. Angela Berry is either a member of, or sits on, the board of

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approximately a half-dozen different organizations, most of them attorney-related groups having a specific connection to the practice of criminal law.

According to Berry, her participation in them is based on the critical role they play, not only to the public, but to attorneys in order to “form strategic alliances and support one another.”


One of the several committees that Berry serves on is the Indigent Crime Defense & Executive Committee (CDEC), which is comprised of volunteer attorneys who desire to create and improve the quality of representation for all defendants, regardless of their income or social status.

The CEDC, like the ARS, was created to assist the general public by providing a quality attorney to serve as a public defender to those who require it, and of course qualify for it.

Through litigation and advocacy “we seek that in any case every defendant has proper representation to protect their constitutional rights,” she says.

The victory in the Martinez case serves as a prime example of the prospective results that can be achieved through the assistance of public service organizations.

Even more, though, it exemplifies the importance of public-oriented, legal assistance programs as we work daily to obtain similar results and continue to look for innovative ways to engage and inform the public.

We understand and realize that we are the voice for many as we continue to cultivate professional relationships with dedicated attorneys such as Angela Berry. 

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1. Be a part of the legal team that will engage high school students in thinking about constitutional issues concerning free speech.
2. A bench officer and two attorneys will moderate discussions over three class sessions between February and April 2020, ending in a student mock appellate argument. An Essay Contest will follow where students can receive scholarship awards.

EDUCATING OUR KIDS BEGINS WITH YOU

The Valley Community Legal Foundation of the SFVBA Needs Attorneys to Work With Judges and High School Students in the Classroom!

“The Constitution and Me”

True Threats v. Pure Speech: Drawing the Line between Safety and Freedom

CONTACT:

Laurence Kaldor at laurencenkaldorlaw@gmail.com or Anngel Benoun at anngel4RE@earthlink.net to volunteer. Training will be provided.

Whether or not you volunteer, please make a tax deductible donation to VCLF to support this and other scholarship programs presented to San Fernando Valley students throughout the year.

Go to: thevclf.org/donate.



Constitution and Me Program, Part 2

ANNABEL BENOUN

VCLF Education
Co-Chairperson



anngel4RE@earthlink.net

IT IS TRUE THAT THERE IS NO SUBSTITUTE FOR education and the VCLF has prioritized the creation of an interactive educational program for high school students that provokes thoughtful conversation of legal issues in a social media environment.

After enjoying great success in the 2019 inaugural course, we are pleased to announce that the second semester of *The Constitution & Me – True Threats v. Pure Speech: Drawing the Line Between Safety and Freedom* program will be presented February-April 2020 at Canoga Park, and James Monroe High Schools, and Taft Charter and Reseda Charter High Schools.

Conceived by Judge Firdaus Dordi, the course fosters insights and stimulates conversation on constitutional questions that impact students today and encourage critical thinking while giving students the opportunity to interact with role models from the legal community.

Students are given a fact pattern that includes accusations of cheating on an exam, a posting on an unofficial school Instagram account and multiple questionable student postings, and the resultant criminal proceedings against the accused with the case eventually winding its way to the U.S. Supreme Court.

A volunteer team of one judge and two attorneys will guide the students in three one-hour sessions as they participate in a Socratic conversation on constitutional issues that juxtapose First Amendment rights against the posting of threatening language and visuals on social media platforms.

Session One will feature an introduction of the volunteers, a presentation of the fact pattern, a free-thinking student thinking exercise and identification of the case issues.

Session Two will focus on a presentation of relevant precedent, while fostering a discussion of existing law and

application of the law to the facts. Students will then name justices, counsel and jurors from their peers in preparation for a moot court argument before the Supreme Court and a jury.


Session Three is the culmination of the course and features student arguments as well as justices and jury deliberation and verdict of an issue yet to be decided by the U.S. Supreme Court.

"This was a wonderful experience and opportunity for my students," said Taft High School government teacher, Amy Herman, when expressing her appreciation for the 2019 program. "It was a great success and, in fact, many students asked when we were going to do it again."

Bench officers and attorney members of the San Fernando Valley Bar Association have an opportunity to join the team of volunteer moderators for this exciting course and share their legal experience with the students. Those interested will be required to participate in one of two two-hour training sessions and attend three one-hour school classroom sessions during the hours of 8:00 a.m.–2:00 p.m.

If you are interested in volunteering, please contact VCLF Volunteer Coordinator, Laurence Kaldor at laurencekaldorlaw@gmail.com.

Training sessions will be moderated by Attorney Joy Kraft Miles and Judge Firdaus Dordi and held from 10:00 a.m.–12:00 p.m., Sunday, January 26 at the office of Lewitt Hackman, 16633 Ventura Blvd., 11th Floor, in Encino and Wednesday, January 29 from 6:00 p.m.–8:00 p.m. at the SFVBA offices, 20750 Ventura Blvd., Suite 140, in Woodland Hills.

As the charitable arm of the Bar Association, the VCLF is only able to present this important course and award student scholarships through your generous donations. To this end, we encourage all of you to support this very worthy cause by visiting www.thevclf.org/donate. 

ABOUT THE VCLF OF THE SFVBA

The Valley Community Legal Foundation is the charitable arm of the San Fernando Valley Bar Association, with the mission to support the legal needs of the Valley's youth, victims of domestic violence, and veterans. The Foundation also provides scholarships to qualified students pursuing legal careers and relies on donations to fund its work. To donate to the Valley Community Legal Foundation or learn more about its work, visit www.thevclf.org.

HOLIDAY OPEN HOUSE

PHOTO GALLERY

On Tuesday, December 10, SFVBA held its Holiday Party at its offices in Woodland Hills. The annual event provided members with an opportunity to celebrate the holiday season, socialize, and, at the same time, put smiles on the faces of children as SFVBA members donated dozens of toys for later distribution at several Valley homeless and domestic violence shelters.



BLANKET THE HOMELESS

A Project of the San Fernando Valley Bar Association and the Valley Community Legal Foundation of the SFVBA

Since 1995, the Valley Community Legal Foundation, the charitable arm of SFVBA, has delivered more than 40,000 blankets to homeless and domestic violence shelters located throughout the San Fernando Valley. SFVBA volunteer members assist with the blanket distribution and, on Law Day 2020, will be on-hand to provide pro bono legal assistance to those in need. A tax-donation of \$75 buys ten blankets for those who need it the most. To donate to this worthy cause, please go to <http://thevcf.org/blanket-the-homeless-fund/> to make a tax-deductible donation online.

PHOTO GALLERY



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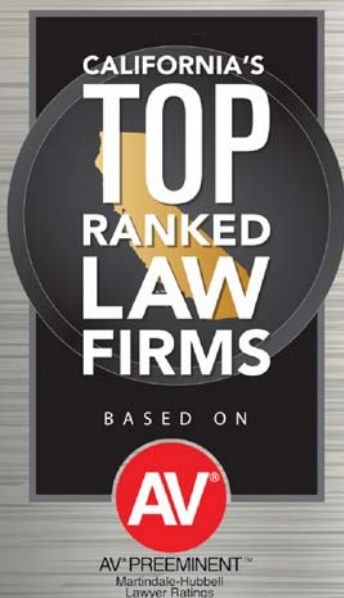
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