VALLEY LAWYER

FEBRUARY 2021 • $5

A Publication of the San Fernando Valley Bar Association

Bouncing Pickles and Annoying Lizards: Arcane and Absurd Laws Still On the Books

Trademark: The Dangers of Failing to Register

Earn MCLE Credit

www.sfvba.org

Our Family Law Practice Group:

over 30 years of service in Southern California

Vanessa Soto Nellis*
Chair, Shareholder

Lynn Soodik
Shareholder

Melissa L. Mayer*
Senior Associate

Susan T. Goldstein
Of Counsel

*Certified Specialist in Family Law, State Bar of California Board of Legal Specialization

LEWITT | HACKMAN
SHAPIRO | MARSHALL | HARLAN
A LAW CORPORATION

16633 Ventura Boulevard, 11th Floor
Encino, California 91436-1865

lewitthackman.com
818.990.2120

CONTENTS

FEBRUARY 2021

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association

FEATURES

DEPARTMENTS

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION

20750 Ventura Boulevard, Suite 140
Woodland Hills, CA 91364
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

EDITOR
Michael D. White

GRAPHIC DESIGNER
Marina Senderov

Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Printing Southwest Offset Printing

Eyes on the Prize

DAVID G. JONES
SFVBA President

djones@lewitthackman.com

AS WE START A NEW YEAR, likely exhausted but hopeful for a fresh start, perhaps it is time to take stock of how we can approach 2021, both as lawyers and as members of our community.

While, lately, the emphasis has been on a seemingly never-ending swirl of political drama, perhaps we can shift our focus from the national political stage to our personal and professional lives.

With the promise of a COVID-19 vaccine for all who want it over the next several months and hope for a calmer political environment, many of us are looking to improve our lot by building on family and personal relationships and improving our professional focus and performance.

These things are meaningful and truly attainable.

Stepping back and taking stock of our personal and family successes can help create a positive attitude, but in order to have a truly amazing 2021, each of us should re-evaluate a personal or professional relationship that we may well have neglected over the past 12 months and work to rekindle it.

It can start with a text; then, perhaps, a phone call. Not only will such an investment brighten someone's day, but it will also serve to improve your own mental well being.

On the professional level, hopefully, by now, each of you has developed a work routine and rhythm that works best for you. That said, we can always improve our focus and efficiency if we step back and take a critical look at the big picture.

Personally, I have a tendency to set goals in early January and then keep my head down in pursuit of those goals throughout the year.

Among so many other lessons, 2020 taught me the importance of being adaptable. So, rather than setting very specific fixed goals, I have stepped back a bit and re-evaluated my core goals, preparing to add a bit here and subtract a bit there as the year goes on.

February 1 is a great time to really kick the work focus into overdrive. By easing into our work in January, setting our core goals and preparing to maintain a consistent effort through the year, that date is a perfect starting point.

That is the message that I delivered to our Board of Trustees at its last meeting. I explained my perspective to the Board, sharing that with so many trustees working on a wide array of significant projects, it is understandable that the work of the Bar would take a back seat during the early weeks of January—a time when it is natural to refocus on our professional and work-related goals.

I actually told them that is a perfect approach that allows for everyone to get their personal and professional houses in order and, on February 1, start the push to complete their Bar-related projects.

Some may quibble with this approach, asking whether it is better to maintain a consistent level of effort and effectiveness year-round? Why, say some, would we ease off the gas pedal in January of all months?

The bottom line is that everyone needs to develop their own approach to achieving goals. My genial suggestion is to organize in a way that prevents burnout, maximizes efficiency, and allows for the proper focus on the core goals that genuinely matter.

To understand that and the incalculable value that personal family relationships have are what will carry us through a truly happy 2021.

Civil Discourse: "Wouldn't That Be Nice"

MICHAEL D. WHITE
Communications Manager

michael@sfvba.org

PERHAPS YOU ARE NOT aware, but there actually is a National Institute for Civil Discourse. Allied with the University of Arizona, the Washington, D.C.-based group was founded several years ago to debunk the notion that every area of social interaction, from politics and what we eat to public restrooms and education, has to be weighed on a scale that has to tip either to the left or the right.

But, the Institute proposes, the most effective solutions to challenges are forged "in the middle." In other words, there has to be balance, a middle ground.

Alas, that middle ground seems dubious, more often than not obscured by the fog of partisan warfare that clouds real issues with barbed rhetoric, late night vulgarities that pose as humor, and snarky Twitter blurbs passed around as profound insight.

In 2013, the Institute commissioned a survey which found that 70 percent of Americans believe incivility had reached crisis proportions. There is little doubt whether that percentage has increased significantly over the past four years.

Incivility, the Institute later wrote, "is ubiquitous; no area of American society is untouched. The belief that America has a civility problem and that civility will get worse has not waned since the survey's inception."

Seven years on, those "crisis proportions" have, it seems, reached an even greater level of magnitude.

Dr. Keith Allred serves as Executive Director of the Institute. Prior to assuming his position in 2019, he was the first professor of Negotiation and Conflict Resolution hired by Harvard's Kennedy School of Government.

A graduate of Stanford, he earned his PhD at UCLA and began his academic career as a professor at Columbia University in New York.

Interviewed on a recent podcast, he said that, as a nation, "this is one of the most challenging moments in American history at the level of civil discourse and the level of partisan divisions. We've been more deeply divided as a country before—we had a Civil War, and I think during the Vietnam War and civil rights movement, we were more deeply divided."

What's unique about our age, he said, "is that these cut so cleanly along partisan lines. In those earlier conflicts, those kind of crossed partisan lines. So the unique challenge we have is that everything has been sucked into the differences between Republicans and Democrats and become so tribal and toxic—and that really is the worst in American history right now."

Dr. Allred pointed to an analysis of the more than 13 million roll call votes cast in Congress since 1789, which showed that congressional voting "is along in the most purely party lines in American history in 230 years."

He labelled the trend "hyper-partisanship."

Perhaps—as a people, as a nation—we all need to step back a bit, open the window, and let the fresh air of civility and reason into the room.

Wouldn't that be nice?

CALENDAR

FEBRUARY 2021

SUN	MON	TUE	WED	THU	FRI	SAT
BLACK HISTORY MONTH						
	1	2	3	**ZOOM MEETING** 4 **Membership and Marketing Committee** 6:00 PM	**WEBINAR** 5 **Bankruptcy Law Section** **Attack the Complaint! The Power of Federal Rule of Civil Procedure 12** 12:00 NOON The Honorable Barry Russell and bankruptcy attorney J. Scott Bovitz will discuss Rule 12(b) motions to dismiss complaints. When should they be filed? How do you win these motions? Why are so many denied? Approved for Bankruptcy Law Legal Specialization. (1.25 MCLE Hours)	6
7	8	**WEBINAR** 9 **Probate and Estate Planning Section** **Improving the Odds of Preserving Victories and Overcoming Losses in Probate Court** 12:00 NOON Wendy C. Lascher, Esq. and Matthew D. Kanin, Esq. will discuss how best to persevere in Probate Court. (1 MCLE Hour) **ZOOM MEETING** **Board of Trustees** 6:00 PM	**WEBINAR** 10 **Business Law and Real Property Section** **Real Estate: What to Expect in 2021** 12:00 NOON Lloyd Segal, President Los Angeles Real Estate Investors Club, LLC outlines what 2021 might look like. (1 MCLE Hour)	11	12	13
14 Happy Valentine's Day	15 Presidents Day SFVBA OFFICES CLOSED	**WEBINAR** 16 **Taxation Law Section** **Top Ten Tips to Help You Avoid Landing on Wrong Side of a Tax Audit!** 12:00 NOON Former IRS Senior Trial Attorneys Michele Weiss and David Warner will present tips, strategies and best practices tax practitioners can employ in preparing for and during an examination of a taxpayer's returns. (1 MCLE Hour)	**WEBINAR** 17 **Litigation Law Section** **Bad Faith Failure to Settle: What Every Litigator Should Know** **Sponsored by** PARRIS ELLIS BAKH LLP Trial Lawyers 12:00 NOON Presenters: Jason Fowler, Esq. & Daniel Eli, Esq. of the Parris Law Firm. Free to all members. (1 MCLE Hour) See ad on page 43	**ZOOM MEETING** 18 **Inclusion and Diversity Committee Meeting** 12:00 NOON **Santa Clarita Bar Association Presents** **Annual Employment Law Update with Brian Koegle, Partner at Poole, Shaffery & Koegle, LLP** 6:00 PM Contact (661) 505-8670 or info@scvbar.org	19	20
21	22	**VIRTUAL EVENT** 23 **State of the Courts** 12:15 PM - 1:15 PM Featuring Supervising Judge Virginia Keeny. We welcome your questions regarding the courts. All questions should be submitted to events@sfvba.org.	24	25	*Save the Date* **FREE ZOOM EVENT** **LASC Judicial Mentorship Program: The Road to Serving On the Bench** **Tuesday, March 23** **12:15 PM - 1:15 PM** See ad on page 27	
28						

SFVBA COVID-19 UPDATES sfvba.org/covid-19-corona-virus-updates/

SFVBA merchandise is now available on Zazzle
https://www.zazzle.com/store/sfvbashop
See ad on page 6

MCLE

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

Trademark:
The Dangers of Failing to Register

By Sevag Demirjian

Some companies believe they are properly protected since they incorporated their business under their brand name or secured a URL and social media accounts. They are wrong and could lose everything if they fail to properly protect their trademark by registering it with the United States Patent and Trademark Office.

TRADEMARKS SERVE TO PROTECT A BRAND name or logo, as opposed to patents which protect the functionality of an invention, and copyrights that protect artistic and literary works.

Combined, these three types of legal protection constitute what is commonly called *intellectual property*.

Failing to register a trademark with the guidance of an attorney could well result in loss of a brand and, possibly, an entire business.

The three most common issues that could potentially derail a well-established, thriving business include:

- Having an incorrectly filed application approved, which could later void the trademark registration;
- A competitor having already registered a mark years before the company in question; and,
- Being sued by a competitor claiming rights to the mark and not having a registration on file in defense.

Some companies believe they are properly protected since they incorporated their business under their brand name or secured the URL and social media accounts for their brand.

Most of these do not realize they could lose everything if they do not properly protect their trademark with a registration. Registering a trademark is a priority, and cannot be done without professional assistance as the benefit of saving legal fees is heavily outweighed by a multitude of risk.

Failing to register a trademark or filing an incorrect or improperly prepared registration could leave a company facing a protracted lawsuit that would cost thousands more than that initial trademark.

Registering a Trademark

It is important to first understand the benefits of registration as well as the process.

Every country has its own Trademark registration system. In the United States, trademarks are federally registered with the United States Patent and Trademark Office (USPTO).

In addition, every individual state also has its own trademark registration system, which, under certain circumstances, can also provide useful protection.

Once it is understood how the system works and what the benefits are, the benefits of properly registering a trademark can be better understood.

The United States Lanham Act—known as the Trademark Act—was enacted in 1946 and lays out the federal laws regulating trademarks, infringement and their registration with the USPTO.[1]

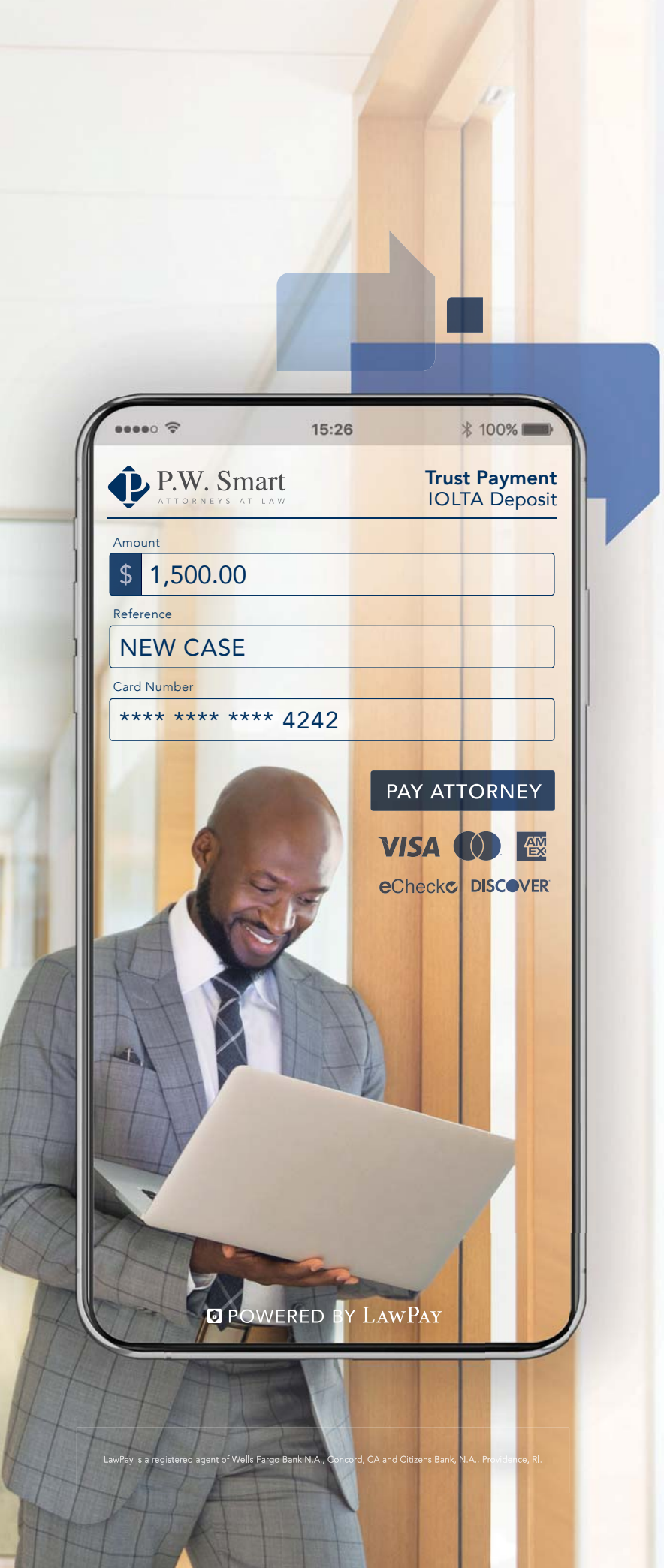
The Act provides two separate registers—the Principal, or primary, Register and the Supplemental, or secondary, Register—which serve as indexes for the appropriate registration of trademarks with the USPTO.[2]

The Principal Register is considered the standard, or most commonly utilized, of the two, while the Supplemental Register is used less frequently to catalog otherwise weak *descriptive* marks.[3]

The following rights and benefits attach to all marks, whether inventoried in either the Principal or Supplemental register:

- The authority to use the stronger ® registered symbol as opposed to the common law trademark ™ symbol. The ® mark is stronger than its ™ counterpart, signifying that the mark has been properly registered with the federal government.[4]
- The right to prevent others from registering similar marks with the USPTO. The mark will appear in trademark searches on the USPTO database, thus designated a regular trademark for those who do not know the difference. Registration also prevents others from registering similar marks, since a registered mark will be considered *prior art* by the federal government.
- Permission is granted to obtain additional monetary remedies in an infringement lawsuit, including enhanced damages and possibly attorneys' fees.
- The registration can be used as a priority classification on an international trademark application(s) filed in some foreign countries and political/economic regions.[5]
- A guarantee of permanent trademark protection, as long as the mark is used continuously and renewed every ten years.

Sevag Demirjian is a partner at Foundation Law Group LLP. He is a registered patent attorney specializing in trademarks and litigation. He can be reached at Sevag@FoundationLaw.com.



LawPay®

AN AFFINIPAY SOLUTION

POWERING PAYMENTS FOR THE LEGAL INDUSTRY

The easiest way to accept credit card and eCheck payments online.

Powerful Technology

Developed specifically for the legal industry to ensure comprehensive security and trust account compliance

Powering Law Firms

Plugs into law firms' existing workflows to drive cash flow, reduce collections, and make it easy for clients to pay

Powering Integrations

The payment technology behind the legal industry's most popular practice management tools

Powered by an Unrivaled Track Record

15 years of experience and the only payment technology vetted and approved by 110+ state, local, and specialty bars as well as the ABA

San Fernando Valley Bar Association
founded in 1926

ACCEPT MORE PAYMENTS WITH LAWPAY

866-751-8288 | lawpay.com/sfvba

- Cease-and-desist letters to competitors illegally using a mark are much more effective in curtailing infringement and avoiding litigation if the trademark is registered.

- Trademark applications and registrations will appear on the public USPTO database within a week of filing. Potential competitors and infringers may find the registered mark or registration application in the USPTO database and be deterred from continuing its illegal use.

- A registration can help avoid filing a lawsuit in federal court—typically can be a long and expensive undertaking—to enforce common law trademark rights.

Most of the additional rights that a Supplemental registration lacks will only become apparent if a lawsuit is filed over rights to the mark.

The Principal Register offers a statutory presumption that the mark is valid; prima facie evidence of ownership of the mark; an acknowledgment that the registrant has exclusive use of the mark; deems the mark eligible for incontestability; and proves that the mark has acquired secondary meaning.[6]

These features can be a huge benefit in court as they shift the burden of proof onto the other party in challenging a mark's validity, ownership, and exclusive use by the registered owner.

Thus, federal trademark protection reduces the risk of conflicts with other companies thus reducing the potential cost of litigation.

Types of Applications

Most trademark applications are filed as standard *in use* trademarks on a *1a* application.

A trademark can be applied-for before it is used in commerce with a *1b* application, commonly known as an *intent to use* application. These applications move through the same approval process, except that they require the filing of an *allegation*, or *statement*, *of use*, which provides evidence that the trademark has been used in commerce within six months of the application's approval. This six-month time frame can be extended up to three years, with fees.[7] [8]

Registration on the Supplemental Register is limited to marks that are applied-for with *1a in use* applications.[9]

Additionally, a federal registration may be necessary for obtaining a registration in another country. The USPTO's *Madrid Protocol* system permits the registration of a mark in dozens of foreign countries, making filing internationally much simpler and more cost-effective than hiring foreign counsel to file directly within the country in question.

Registrations can also be recorded with U.S. Customs & Border Protection to help prevent counterfeit goods bearing illegal, unregistered trademarks from entering the U. S. as imported goods.

Popular online sites where trademark rights are frequently enforced, such as Amazon, Facebook and YouTube, can be of great help in removing content that is in violation of federal trademark, or copyright, law.

Analyzing Potential Trademark Conflicts

When a trademark is filed with the USPTO, an Examiner will be assigned to review the application.

The Examiner's responsibility is to make sure the application is correct, complete, and that the applied-for mark has no conflicts with a previously registered mark or a previously filed application.

Although the rules and laws utilized for the analysis of trademark conflicts are the same within the trademark office and the courts, they are applied differently.

The trademark office deals with the question of whether a new applicant should be allowed to register its trademark over a similar, previously registered mark; however, the USPTO is limited in the extent of relevant facts and evidence it can review in each case.

The Examiners perform a more general analysis and will err on the side of the first registrant.

On the other hand, The courts not only need to determine if one mark can be registered in light of another, but must also determine if one mark is infringing the other, as well as the amount of monetary damages of such infringement.

As such, the courts are obligated to perform a more thorough review as they weigh all the facts and evidence before deciding whether two trademarks conflict or not, in effect, splitting hairs that the trademark office will not.

The DuPont Factors

In performing the likelihood of confusing analysis, the USPTO relies on a test called the *DuPont factors*.[10]

Although *DuPont* case outlines as many as 13 factors, the USPTO examiners will usually focus their analysis on the first two—namely, the similarity of the marks and the similarity of the goods or services.[11]

The courts go much further, however, taking into account all 13 factors, especially the strength of the marks, the manner and breadth of usage of the marks, evidence of actual confusion, as well as the geographic location of such usage.

This means that just because the trademark office rejects an application in light of a previously cited registration, it does not necessarily mean the use of the applied-for mark would necessarily infringe that cited registered trademark. It also does not mean that a mark cannot be used.

A proper review requires that a separate analysis be performed for both registration and infringement detection purposes.

Class Categorization

Every product or service is categorized by the USPTO into one of 45 main classes.[12]

For example, different varieties of fruit are found in Class 31, computer software in Class 9, and automobiles in Class 12.

This class system is important when searching for potentially conflicting marks as a single application can be filed in multiple classes, and some goods or services may fall into more than one.

Thus, a company that uses the same brand name to make hats—Class 25—may also operate an online retail store—Class 35—that is operated to sell the hats.

For at least that reason, two marks in different classes can still conflict. The reverse is also true, as two marks in the same class could pose no conflict whatsoever—an online retail store that sells hats and one that sells computers would both be in Class 35 but would likely not conflict.

When applying for a trademark, the applicant must provide the appropriate class numbers the trademark will potentially be registered with, as well as a description of what the trademark will be used for in each class.

Applicants will only receive protection for the mark in connection with the goods or services they list, and with which they use the mark or intend to use the mark. That, plus *closely related* goods and services, at the discretion of the USPTO Examiner.

For example, if applying for the mark *Banana*, it must be stated that it will be used to sell computers, not the fruit. Another applicant may still use and register this same mark to sell cars, or other goods and services unrelated to computers.

There are exceptions to this, especially with *famous* marks. The word mark *banana*, for example, cannot be registered to represent bananas, as that would be considered a generic or highly descriptive mark.

Multiple classes can be included in one application. In such a case, an applicant must put together a detailed description of the specific product or service that describes the strength and breadth of the trademark that will be listed under the appropriate Class number or numbers.

Knowing what other marks a trademark may conflict with and whether they are registered or not is vital to ensuring that the risk of conflict and possible litigation in the future is avoided.

Is Legal Counsel Necessary?

Some trademark applicants do not use a lawyer to register their trademark and are fortunate enough to not run into problems.

For those that do run into problems, the decision to go it alone can prove to be a very costly one.

Problems with a trademark registration may not rise to the surface unless there is a dispute, at which point a trademark attorney on the opposing side will start picking apart the trademark in question, in an effort to uncover weaknesses and mistakes, no matter how minor.

The first thing a good trademark attorney should do in any dispute is examine the application and registration for red flags; then run a thorough clearance search before applying to register the mark. The results of such a search may help avoid disputes.

One of the most common mistakes made by applicants is the listed *first use* date. Many pro per applicants will list the date they incorporated their company as the *date of first use*, instead of the correct date, that is the day the public offering of goods or service was first made.

This is probably the most common claim—*fraud on the trademark office*—that is made when an opposing party files an appeal to cancel a trademark registration.

Another common error is that the submitted specimen, which should show evidence of the use of the trademark by the applicant, does not properly show the mark in use with the listed goods or services. Such a proper specimen is required for every registration.

Many applicants will submit insufficient specimens which, though approved by the USPTO Examiner, will come to light in a later lawsuit that could result in their trademark being cancelled for failure to have provided proper evidence of use.

Worst-Case Scenarios

One worst case scenario in failing to properly register a trademark is the all-too-common mistake of having a competitor register the mark before a company that has possibly been using the trademark for years.

Such a situation can be disastrous, especially if you are a smaller company conducting most of your business locally or regionally.

The scenario is which one business uses the mark first, but another registers first, is one of the most common fact patterns in trademark litigation.

In reality, the business that used first can be allowed to continue use of the mark with their business, but will be frozen out of expanding use of the mark in untapped geographic market areas, and even, quite possibly, from using the mark to offer additional goods and services.

The first to register will be granted nationwide use, and with that may come the right to the brand name on nationally accessible websites and social media pages, as well as online search terms and advertising sites such as Google.

In today's online world, these rights are critically important as being slapped with a cease and desist order demanding a business change its name and relinquish its website and social media pages to a big corporation could sink a business overnight.

A competitor may claim superior rights to the mark based on use of the brand name nationally for the same goods or services which have been registered with the USPTO.

At that point, tens or hundreds of thousands will more than likely have to be paid in legal fees and the name will be kept, but the company will be frozen out of any future expansion into additional potential market areas, while, at worst, the brand will be lost and the company will be forced to start anew from square one.

A company that waives legal assistance may still have its application approved and registered. In fact, though, in certain cases, having an incorrectly filed application approved can be much worse than having it rejected.

Relying on that registration for years and investing substantial amounts of time and money into the brand, the company could be informed years later by an opposing trademark attorney that the registration is invalid, and that it is being cancelled.

Had it been rejected in the first place, or had an attorney advised the company against use of the mark following a thorough analysis, the loss of time, money, reputation and market share could have been avoided.

Failure to conduct a thorough, proper search to identify potential risks before using a mark could also increase the strong possibility of facing substantial damages for infringement, even if the USPTO approves the application.

In a dispute between two companies claiming rights to a mark, the one without a registration will likely be in a weak and legally vulnerable position.

Fending off potential conflicts may be the most valued benefit of properly registering a trademark and acknowledgment of the fact that chances should not be taken with a brand name or trademark similar to that of a competitor.

Measuring the Cost

Properly filing and registering a trademark to protect a company and its brand will result in a much stronger position when disputes arise.

The strength of this position will be thoroughly analyzed by the opposing attorney, and the potential to have leverage in settlement discussions will be based on that strength.

Being able to quickly quash any infringement or favorably negotiate a way to navigate through potential disputes could make the difference between moving past such common business problems as a kink in the supply chain or an accounts payable error, or having to deal with issues that could mean huge financial losses or the loss of market share that could significantly impact the future of a company and its brand.

---

[1] 15 U.S.C. § 1051 et seq. (aka the *Lanham* Act).
[2] *Id.* § 1051 and § 1091.
[3] *Id.* §§ 23-28 and 15 U.S.C. §§ 1091-1096.
[4] *Id.* § 1111.
[5] Trademark Manual of Examining Procedure (TMEP) § 1001.
[6] *Id.* § 801.02(a).
[7] 37 C.F.R. § 2.88.
[8] *Id.* § 2.89.
[9] *Id.* § 2.75(c).
[10] *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973).
[11] *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); "The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks."); TMEP § 1207.01. Only those factors that are "relevant and of record" need be considered. *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1382, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006).
[12] TMEP § 1401.02(b).

Trademark: The Dangers of Failing to Register
Test No. 148

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

1. The United States Lanham Act codified at 15 U.S.C. § 1051, sets forth the federal laws regulating trademarks.
   ❑ True ❑ False
2. An intent-to-use trademark application is a *1a* application.
   ❑ True ❑ False
3. A registration with the USPTO will secure national trademark rights.
   ❑ True ❑ False
4. A trademark registration is required to file a lawsuit for a trademark.
   ❑ True ❑ False
5. The two registries available for registration of trademarks are the Principal and the Secondary.
   ❑ True ❑ False
6. The *du Pont* factors determine if there is a likelihood of confusion between two marks.
   ❑ True ❑ False
7. Submitting evidence of use of the mark in commerce is required for trademark registration.
   ❑ True ❑ False
8. Cease and desist letters are more effective with a trademark registration attached.
   ❑ True ❑ False
9. Registration of your mark can be used as priority to your international trademark application in some foreign countries.
   ❑ True ❑ False
10. Pending trademark applications do not appear in searches of the USPTO online database.
    ❑ True ❑ False
11. Trademarks must expire after a certain time.
    ❑ True ❑ False
12. You can use the registration— ® —symbol on all trademarks.
    ❑ True ❑ False
13. You can use the— ™ — symbol on all trademarks.
    ❑ True ❑ False
14. You can register your trademark in more than one class in a single application.
    ❑ True ❑ False
15. The same trademark in the same class will always conflict.
    ❑ True ❑ False
16. Once the USPTO approves and registers your trademark, this ensures you did not make any mistakes on the application.
    ❑ True ❑ False
17. Using a lawyer can help significantly reduce the risks of problems with your trademark.
    ❑ True ❑ False
18. U.S. Customs & Border Protection allows you to file your registration with them to help prevent counterfeit goods from being imported.
    ❑ True ❑ False
19. If the trademark office rejects your application in light of a previously cited registration, then your use of that mark would surely infringe the registered trademark.
    ❑ True ❑ False
20. A person will have full priority rights as long as they are the first to register a mark.
    ❑ True ❑ False

Trademark: The Dangers of Failing to Register
MCLE Answer Sheet No. 148

INSTRUCTIONS:

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

   San Fernando Valley Bar Association
   20750 Ventura Blvd., Suite 140
   Woodland Hills, CA 91364

METHOD OF PAYMENT:

❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for
$ _____.

_____
Credit Card Number

_____ _____/____/_____
CVV code Exp. Date

_____
Authorized Signature

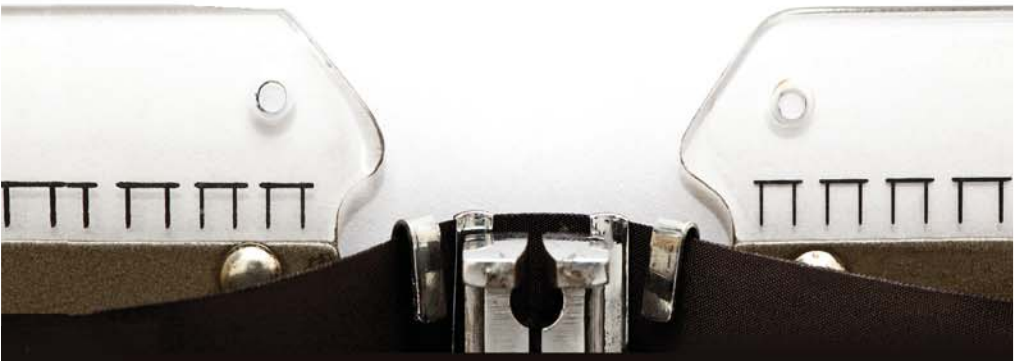
5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.

Name _____
Law Firm/Organization _____
_____
Address _____
City _____
State/Zip _____
Email _____
Phone _____
State Bar No. _____

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

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

Retrospective



On October 24, 1952, The San Fernando Valley Bar Association celebrated its 25th anniversary with a banquet at the San Fernando Valley Country Club in Woodland Hills. The event featured an address by Los Angeles Superior Court Presiding Judge Stanley M. Barnes. Also in attendance were several Association Past Presidents.

SILVER ANNIVERSARY—Members of San Fernando Valley Bar Association celebrated 25th Anniversary of founding with banquet held Friday evening in San Fernando Valley Country Club, Woodland Hills, when assemblage was addressed by Stanley M. Barnes, presiding judge of Superior Court. Among participants, seated from left are Judges C. Newell Carns, Herbert A. Decker, Phil Richards and Harold Schweitzer. Standing: Henry L. Walleck, Ralph Swagler, James Reitz, I. Victor Tierman and Hubert W. Swender.

VALLEY BAR INSTALLS — The San Fernando Valley Bar Association installed new officers at a recent dinner meeting. Shown from left are Herman J. Isman, president; Connolly Oyler, president-elect; Van Nuys Superior Court Supervising Judge Joseph DiGuiseppe, installing officer; Lee K. Alpert, treasurer; and Robert E. Lowenstein Jr., secretary.
Photo by Marvin Finder

On October 1, 1982, the SFVBA installed incoming President Herman J. Isman and the Bar's new officers at a dinner meeting in Woodland Hills, reported the *Los Angeles Daily Journal*.

By Michael D. White

Bouncing Pickles & Annoying Lizards:

Arcane and Absurd Laws Still On the Books

Blend the definitions of 'arcane' and 'absurd' into a single expression–attempt to comprehend something completely ridiculous–and you have the makings of an interesting and entertaining review of some of the most bizarre and amusing laws and statutes that are still on the books across the country.

ARCANE IS DEFINED AS A THING THAT IS "difficult for one of ordinary knowledge or intelligence to understand." Absurd is defined as that which is "wildly unreasonable, illogical, or inappropriate."

Blend the two—attempt to comprehend something that is completely ridiculous—and you have the makings of an interesting and entertaining review of some of the most bizarre and amusing laws and statutes across the country that are still on the books.

Bouncing Pickles

On May 7, 1948, an article appeared in the Hartford (Connecticut) Courant with a headline that read: "Pickles Lack Bounce, Two Men Arrested."

According to the fevered article, two sly pickle packers—Moses Dexler and Sidney Sparer—had been taken into custody by the Hartford police for selling pickles that were "unfit for human consumption."

Rising to the task of getting to the bottom of the jar, so to speak, then-State Food and Drug Commissioner Frederick Holcomb searched for a way to determine if the briny cucumbers in question were, in fact, potentially hazardous to the state's unwary consumers.

In addition to a battery of lab tests used to determine the quality, or lack thereof, of the pickles, Holcomb told a gathering of reporters that a pickle, dropped from a height of one foot, should bounce.

The pickles, alas, failed to rebound. Sparer was fined $500 and the pickles were condemned and trashed. What happened to Dexler isn't recorded.

Over the years, the case of the bouncing pickles has passed into legal lore, and although there was no specific law that specifically detailed an official bounce test, there were several statutes outlined in the Sanitary Code of the State of Connecticut that addressed the incident of the non-rebounding cucumbers.

Hung Out to Dry

Before one succumbs to the conceit that such a ridiculous thing couldn't occur in today's enlightened society, consider the following.

Prior to 2009, the good citizens of Vermont who resided in condominiums and other housing complexes were prohibited from drying their clothes on a clothesline. A consortium of apartment and condo associations had pushed through the law, claiming that clotheslines detracted from the aesthetics of their facilities. That year, the state legislature voted to rescind the rule with a provision that was tucked into an energy bill claiming that electric dryers can use 15 percent of a household's energy consumption.

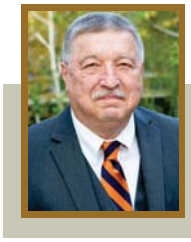
Some other contemporary zingers:

• Maine's State Code states that "*the sale of cars and any other type of motor vehicle on Sunday is strictly prohibited*." The law, enacted just a few years ago, applies to any person who engages in the purchase, sale, exchange or trade of a new or used car on the day of rest. Any violation thereof "*is a crime, punishable by up to six months in jail and a $1,000 fine and revocation of the auto dealer's license*."[1]

• Florida ran into a bit of trouble in 2013 when it accidentally banned all computers in the state. A confusingly worded law designed to ban internet cafes involved in illegal gambling prompted a lawsuit, arguing that the ban could possibly be interpreted to apply to any public- or privately-owned internet-connected device in the state.

• It took until 2012 for the Los Angeles County Board of Supervisors to erase a law from the books that made it illegal to play with frisbees or footballs on any beach in the County without the expressed permission of a lifeguard.

• The New Orleans City Code states that "*It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the city fire department while in the actual performance of his duty.*" Despite the fact that in 1974 the U.S. Supreme Court ruled it unconstitutional, the law is still on the books.[2]



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.

• Every elected state legislator, public office holder, and practicing attorney in Kentucky is required to take an oath stating that they have never fought a duel with deadly weapons. The law was enacted by the State Legislature in 1849 and is still in effect.

• In 1996, the City of Southington, Connecticut, saw fit to ban the sale and/or use of 'Silly String' in public. Violation will result in a serious $99 fine. A similar ordinance is on the books in Mobile, Alabama, where it is illegal to "*keep, store, use, manufacture, sell, offer for sale, give away or handle any 'spray string,' 'snap pops,' or other matter or substances similar thereto*."

• The use of a knife and fork to eat fried chicken is forbidden by law in Gainesville, Georgia, as a city ordinance forbids the use of anything other than one's hands to consume the regional pan-fried delicacy. The law was enacted in 1961 as a PR stunt to promote the town's poultry industry, but it still remains on the books. In 2009, a 91-year-old woman who was "arrested" by the sheriff for consuming fried chicken with a fork was pardoned just moments later by Gainesville's mayor.

• It took until 2019 for the City of Severance, Colorado—population 4,275—to repeal an ordinance banning the throwing of snowballs. According to the town's Municipal Code, it was illegal to have a snowball fight. It read: "*It is unlawful for any person to throw or shoot any stone or any other missile upon or at any person, animal, building, tree or other public or private property; or at or against any vehicle or equipment designed for the transportation of persons or property*." The law was scrapped after a third-grade student appeared before the Town Council to challenge the law. It was first enacted in the 1920s to prevent youngsters from pummeling cattle with snowballs.[3]

• Be advised that you can get pinched in Derby, Kansas, should you succumb to the temptation to bash a malfunctioning vending machine. Also, if you are thinking about laying some rubber drag racing down Derby's Main Street, think again. According to a recent addition to the town's rather meaty Municipal Code, "*It is unlawful for any person or persons, while operating a motor vehicle on the streets or highways of the city, to accelerate or speed the vehicle in such a manner or to turn a corner in such a manner as to make the tires screech*." Violation could result in a fine of $500 and/or 30 days in the county jail.[4]

There is More

• In New York, it is—curious in light of recent events on New York City streets—unlawful for three or more people wearing masks to gather in public for a demonstration or a march? Originally enacted in 1845, the law exempts masks worn for masquerade parties and similar events.

• The singing or playing the Star Spangled Banner other than as a whole and separate composition is punishable by a fine no more than $100 in Massachusetts.

• In Wisconsin—America's Dairyland—many different state-certified cheeses, such as Muenster, cheddar, Colby, and Monterey Jack must, by state law, *"be fine, highly pleasing, and free from undesirable flavors and odors, except that the cheese may have*."

• Any competition in Minnesota in which participants attempt to capture a greased or oiled pig is illegal. The same law also prohibits turkey scrambles and, further south, in Nebraska, it is against the law for a bar to sell beer unless it is simultaneously brewing a kettle of soup.

• Billboards are banned in Hawaii, with the state also outlawing, curiously, the placing of coins in one's ears.

• In Florida, doors to public buildings are required by law to open outward, while in Wyoming, state law prohibits fishing with firearms, or even wounding a fish with a gun.

• At one point, it was illegal in Kansas to top a slice of cherry pie with a scoop of ice cream. According to the Kansas Secretary of State's office, it is unclear how the anti-á la mode edict originated or whether it's still technically on the books, but, fortunately for obvious reasons, it hasn't been enforced for several decades.

• In Washington, "*a motorist with criminal intentions [must] stop at the city limits and telephone the chief of police as he is entering the town.*" Also, in the City of Everett, it is an infraction of the law to hypnotize people outdoors.

• Dance halls in South Carolina are not allowed to operate within a quarter-mile of a rural church or cemetery. The state also mandates dance halls to be closed on Sundays.

• It is illegal to sell alcoholic beverages at a discount in Utah, so no Happy Hours are allowed there under any circumstances. The state also prohibits any biting during boxing matches and has criminalized any attempt to cause a "catastrophe," which, according to the Utah State Code, is defined as "*widespread injury or damage caused by weapons of mass destruction, explosion, fire, flood, avalanche, or building collapse*."[5]

• Planning on visiting Juneau, Alaska? If you find yourself in need of a haircut, remember that it is a violation of the law to bring your flamingo into the barbershop.

• If you are thinking of mailing someone in Kentucky a bottle of beer, wine, or spirits by mail, you might want to reconsider now that you are aware that if the shipment is intercepted, it could cost the recipient a five year stretch in Danville State Prison.

• Oregon and New Jersey have laws against people pumping their own gas. You can be fined for leaving your car door open too long in Oregon.

• And, noteworthy enough to be mentioned, in Rhode Island, a Hannibal Lector wannabe can be sentenced to a prison sentence "*not exceeding twenty (20) years nor less than one year for "voluntarily, maliciously or of purpose*" biting off the limbs of another person.

In California

Not to be outdone, the Golden State has more than its fair share of curious, bewildering statutes that both raise eyebrows and reach new heights of flight and fancy.

It is a state where, by law, women are not allowed to drive a motor vehicle while wearing a housecoat; it is illegal, except while whaling, to hunt any game while in a moving vehicle, while motor vehicles on the state's freeways are prohibited from traveling at more than 60 m.p.h., if there is no driver behind the wheel.

In the picturesque seaside community of Carmel-By-The-Sea, shoes with heels more than two inches high or with less than a one-square-inch base were prohibited in public in an effort to limit the city's liability for trip and fall accidents by people traversing Carmel's jagged streets.

The Carmel Municipal Code reads, "*The maintenance of an urban forest throughout the City necessarily involves some informality in the lighting, location and surfacing of street and sidewalk areas, which in turn involves greater risk to those wearing high heeled shoes more adaptable to formal city life*."[6]

Despite the ban, though, should you be compelled to wear your Jimmy Choo stilettos on the city's streets, you will need to first obtain a permit from the city. But, there is a catch.

According to the ordinance, "Agreeing that upon the issuance of such permit s/he thereby relieves the City from any and all liability for damages to her/himself or to others caused by her/his falling upon the public streets or sidewalks of the City while wearing such shoes."

Carmel also prohibits a man from appearing in public while wearing a jacket and pants that do not match and, in the dim past, had a law on the books that banned anyone from standing on a public sidewalk while holding an ice cream cone.

The ordinance was enacted in 1929 to keep the town's streets clean, but the law was repealed by actor and past Mayor Clint Eastwood when he took office in 1989.

If you are passing through the Northern California community of Eureka and happen to be sporting a mustache, don't even think about kissing a woman in public. It is illegal.

So is falling asleep on a park bench within the city limits, while "*It shall be unlawful to throw or hit or knock any baseball with a ball bat or any other instrument or engage in or play the game of baseball in any other manner on any city park or playground without first obtaining written permission to do so from the Director of Public Works.*"

Further south, in the heart of the San Joaquin Valley, the citizens of the fair City of Fresno can sleep soundly, secure in the knowledge that there are city regulations prohibiting private bingo games, playing bingo while intoxicated, selling permanent markers within the city limits, and annoying lizards or injuring or disturbing rocks in any municipal park.

Enacted in the days before automobiles were equipped with headlights, but still on the books, is the ordinance in Redlands requiring that motor vehicles may not drive on city streets at night unless a man with a lantern is walking ahead of it.

In the City of Los Angeles, it is illegal to hunt moths under a street lamp; cry on the witness stand; bathe two babies in the same tub at the same time; and lick a toad.

And, according to the Los Angeles Municipal Code, it is also unlawful to allow one or more metallic—Mylar—balloons "*to float, rise, or remain aloft outdoors at a height of five feet or more for any advertising, promotional, or commercial purpose*."[7]

Should you be contemplating washing your neighbor's car in L.A., stifle the urge. It's against the law to do so without their

permission. San Francisco goes a step further in banning inappropriate car care by making illegal the use of old underwear to wipe off cars in a commercial car wash.

In Long Beach, it is against the law to curse on a mini-golf course, and store anything other than automobiles in a garage attached to/or separate from a residential dwelling.

The same quality of life garage mandate is also true in San Francisco, where it is also illegal to walk an unleashed elephant on Market Street or pile horse manure higher than six feet on any street corner.

In a supreme irony, the city has officially "guaranteed sunshine to the masses" and, at the same time, has on its books a law on banning people classified as "ugly" from appearing on its streets.

Chico, California, is not only home to the National Yo-Yo Museum and Bidwell Park, the 26th largest municipal park in the entire country, it is a city where you must obtain a permit to throw hay in a cesspool, while, at the same time, kids are not allowed to play on the sidewalk.

So far as extensive research can tell, Chico is also the only city in the state, if not the country, where you are prohibited from owning a smelly animal hide, bowling on the sidewalk, driving a herd of cattle down a street, and can be fined $500 for detonating a nuclear device within the city limits.

What can be said of Santa Clara—it is forbidden to dedicate individual parking spaces to the patron saint of television. This requires some explanation.

Yes, the city itself is named after St. Clare of Assisi who lived in the 12th Century and was named the Patron Saint of Television in 1958 by Pope Pius XII, because, according to the Vatican, it was said that when she was too ill to attend Mass, she had reportedly been able to hear it and see it on the wall of her room.

Why St. Clare is considered unworthy of having an occasional parking space named in her honor is unclear, but, it seems a bit churlish. She does, after all, have an entire parking lot downtown named in her honor.

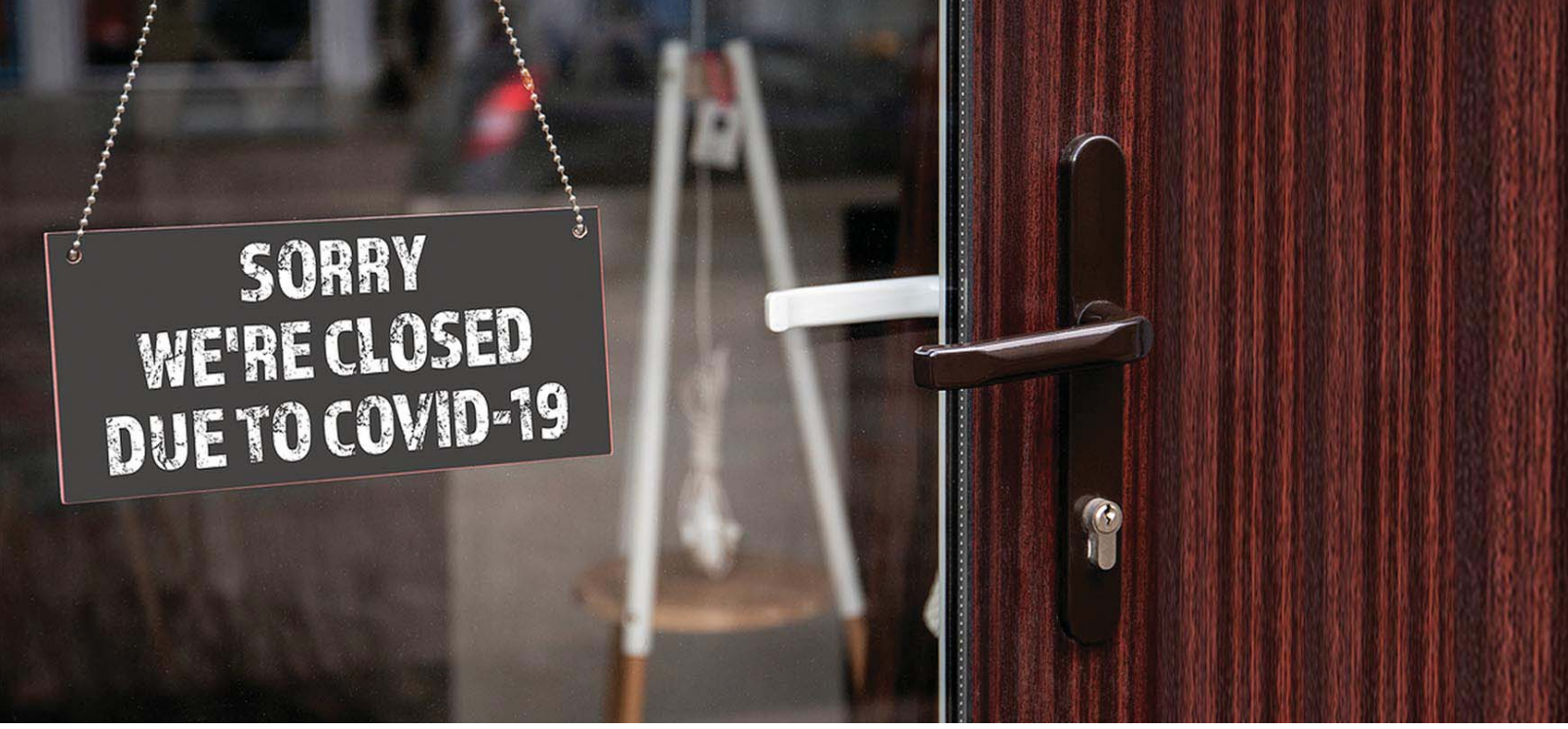
More examples—many, many more—abound to baffle and amuse, but before we call it quits here, there is one more and it really is a classic.

Should you be visiting Georgia, Alabama, or Kentucky any time soon, remember that, on Sundays, absolutely no one may carry an ice cream cone in their back pocket.

Words really do fail.

---

[1] Maine State Code Title 17, § 3203.
[2] New Orleans City Code § 74-2.
[3] City of Severence, Colorado, Municipal Code § 10-5-80.
[4] Derby, Kansas, Municipal Code § 10.04.200.
[5] Utah State Code 76-6-105.
[6] Carmel-By-The-Sea Municipal Code § 8.44.010.
[7] Los Angeles Municipal Code 11.69.010.



Business Liability and COVID-19

By Tina M. Alleguez

IT IS UNDENIABLE THAT THE past year has been dominated by the coronavirus disease (COVID-19).

2020 started with the Atlanta-headquartered Centers for Disease Control (CDC) confirming the first U.S. coronavirus case on January 21 and by March, California Governor Gavin Newsom declared a state of emergency as the number of persons testing positive for COVID-19 began to surge.

Meanwhile, the World Health Organization officially declared COVID-19 to be a pandemic.

Succumbing to pressure from Gov. Newsom, Disneyland closed its Southern California parks, most major sports leagues suspended their seasons and by March 13, schools across the state had closed their doors. That same day, President Donald Trump declared COVID-19 a national emergency.

On March 19, a statewide shelter-in-place order was issued directing all Californians to stay at their place of residence except to maintain the continuity of operations "of essential critical infrastructure sectors."

In accordance with the order, the State Public Health Officer issued a list of Essential Critical Infrastructure Workers that were grouped into 13 essential critical infrastructure sectors. Businesses that were not specified as such were considered non-essential and could not open for business as they would be in violation of the order.[1]

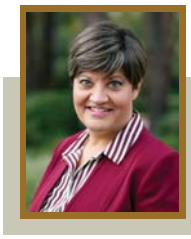
As a result, business owners had to immediately determine if their businesses were essential or non-essential.

Determining if a business was essential or non-essential was just the tip of the iceberg.

Once that determination was made, California business owners—most of whom are not strangers to lawsuits—knew they would be facing a myriad of unique business liability issues stemming from closing their businesses, reopening and/or remaining operational during the pandemic. They feared an onslaught of lawsuits for negligence, claiming their actions or inaction caused an employee or a customer to become infected with the virus.

A Fear Realized

The nagging dread of having to defend themselves in lawsuits was justified as a wave of lawsuits by employees and consumers began to hit federal and state courts.



Tina M. Alleguez, Managing Partner at Alleguez Newman Goodstein LLP in Woodland Hills, is a corporate transactions attorney and business litigator. She can be reached at tina@angllp.com.

For example, workers at a Safeway warehouse facility became sick, prompting a lawsuit by the widow of one of the employees who had died, while a class action was filed on behalf of 800 workers at a Ralph's grocery warehouse in Compton, CA.

Consumer lawsuits were filed by travelers exposed to the virus on cruise ships and a number of nursing homes, which in California have experienced more than 4,900 deaths of residents and staff, were also sued.[2]

Accusations against employers included failing to enforce social distancing, failing to provide protective supplies or providing inadequate protective supplies, and lacking transparency when employees were infected.

For business owners, already negatively impacted by the shut-downs caused by the pandemic, avoiding costly litigation has meant the difference between keeping their doors open and enabling employees to return to work, or being forced to shutter their businesses for good.

By August 2020, the permanent closure of thousands of businesses throughout the state was a sad reality that led to aggressive campaigns in Congress for measures to protect businesses from lawsuits over pandemic-related infections, hospitalizations and deaths.

More than 200 organizations representing American businesses nationwide have been lobbying for Congress to pass said legislation.

U.S. Senator Mike Crapo (R-Idaho) joined 20 fellow senators in co-sponsoring S.4317, the Safeguarding America's Frontline Employees to Offer Work Opportunities Required to Kickstart the Economy (SAFE TO WORK) Act, introduced by Senator John Cornyn (R-Texas).[3]

The Act would create nationwide restrictions on COVID-19 tort liability claims. It would temporarily protect businesses, non-profits, health care providers and educational institutions from COVID-related liability lawsuits.

More importantly, the protections would apply so long as the business can show that it undertook *reasonable efforts* in light of all the circumstances to comply with the applicable mandatory coronavirus mandates and regulations in effect at the time of the alleged exposure.[4]

Many legislators and business groups support such a nationwide liability shield. "Republicans want to protect doctors, nurses, school districts and universities from a second epidemic of frivolous lawsuits," said Senate Majority Leader Mitch McConnell (R-Kentucky).[5]

The Society for Human Resource Management (SHRM) also supports the Safe to Work Act. The legislation, it says, "*would provide timely, targeted and temporary liability relief to organizations as they safely reopen in support of American workers and the economy. The bill also preserves reasonable recourse for those individuals harmed by truly bad actors*."[6]

Although Congress has yet to pass federal legislation that would provide immunity from liability for COVID-19 related claims, as of September, more than a dozen states have enacted liability protections and, in at least 20 states, including Georgia, Louisiana, North Carolina, Oklahoma, Utah and Wyoming, hospitals, nursing homes and healthcare providers are immune from most coronavirus-related lawsuits.[7]

Opponents to these liability protections fear that businesses will not take the necessary precautions if they are shielded from liability. Some lawmakers and labor-union leaders who oppose business liability protection say that workers are risking their safety to receive a paycheck.

"Immunity laws could send dangerous messages that the safety of these workers is not the company's responsibility," said Marc Perrone, president of the United Food and Commercial Workers International Union, at a Senate hearing.[8]

To date, in California, no statewide liability protection law for businesses has been enacted.

Nonetheless, there are legal defenses available for California businesses when sued for COVID-19-related issues, whether they are sued by employees or customers.

Specifically, assuming COVID-19 is a covered occupational disease or injury, most tort claims filed by employees against their employees should be barred by applicable workers' compensation statutes.

Employers should, however, be aware of the limitations and exceptions under applicable workers' compensation statutes that vary from state to state.

Injuries and Diseases Defined

By definition, an occupational injury includes any injury or disease arising out of employment. An injury or illness is deemed work-related "*if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness*."[9]

Diseases contracted by employees generally fall under two categories for purposes of worker's compensation law—occupational diseases and non-occupational diseases.

The California Supreme Court has defined an occupational disease as one that "occurs as a result of continuous, latent exposure to harmful substances."[10]

Infectious diseases such as tuberculosis and HIV have been categorized as occupational diseases, as employees claiming compensation for each of those diseases worked under employment conditions that required them to be exposed to these diseases for a prolonged period of time.

Although, in most contexts, COVID-19 could possibly be analogized to HIV or tuberculosis for employees working in hospitals, it is unlikely that it would be considered an occupational disease since they are typically industrial diseases that develop over a prolonged period of time due to repeated exposure to a harmful substance.

Non-occupational diseases are those "*that are not contracted solely because of an exposure at work or because they are related to a particular type of work*." They are usually not considered work-related injuries, and, but for two exceptions, as a general rule, they are not compensable.

The California Supreme Court has specified that an "*ailment does not become an occupational disease simply because it is contracted on the employer's premises*."[11]

The disease, the Court ruled, must have been contracted due to the employment or must have arisen out of the employment, and there must be a causal link between the disease and the employment.[12]

The two exceptions are:

- If the employment subjects the employee to an increased risk compared to that of the general public; and,
- If the immediate cause of the disease is an intervening human agency or instrumentality of employment.[13]

For COVID-19 claims to be compensable under the first exception for non-occupational diseases, the employee must show that the nature of the employment posed a greater risk of contracting COVID-19 than that of the general public.

What that means is that the employer must show that it followed the guidelines provided by authorities to ensure that employees were not being put at a greater risk of contracting the virus than the general public.

Under the second exception, the employee's contraction of COVID-19 may be compensable if there is an event occurring at a place of employment that can be considered an intervening human agency, or an instrumentality of employment that results in an employee contracting COVID-19, such as, the

employer refusing to provide proper personal protective equipment.

Ordinarily, the burden of proof to establish that the employee was subject to a greater risk of contracting a disease than that of the general public rests with the employee, not the employer.[14]

These burdens of proof, however, were altered by Governor Newsom in May 2020 when he signed Executive Order N-62-20.

The Order mandates that all employees who test positive for COVID-19 are presumed to have acquired the disease as an occupational disease if they worked at a jobsite outside of their home at the direction of their employer between March 19 and July 5 and they tested positive for COVID-19 within 14 days of working at their jobsite.[15]

A Disputable Presumption

With the governor's order expiring in July, there was widespread speculation as to whether the executive order would be formalized into legislation.

As expected, on September 17, 2020, the California legislature passed SB 1159, which states that a disputable presumption exists for an employee who suffers illness or death resulting from COVID-19 on or after July 5, 2020 through January 1, 2023.[16]

Employers can dispute the disputable presumption with evidence such as measures put in place to reduce potential transmission of COVID-19 in the employee's place of employment, alternative sources of exposure in light of the risks of contraction virtually anywhere—from restaurants, to mass transit, to elevators, and any other evidence normally utilized to dispute a work-related injury claim.

In turn, employees will face increased inherent challenges in proving causation as a result of the myriad sources of exposure to the virus.

Another legal defense to COVID-19-related lawsuits will be a business owner's ability to demonstrate the exercise of reasonable care by making cost-effective investments in enforcing social distancing and the wearing of masks, and by following compliance with applicable regulatory standards and guidelines, which have been established detailing when and how businesses in the state may reopen. While staying abreast of and complying with all such guidelines is daunting, such an exercise of care should provide adequate protection from tort liability.

According to the California Civil Code, "*everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself*."[17]

Numerous factors are considered in determining whether an owner is responsible for an injury to a third party "*that occurs on premises such as the likelihood of injury to plaintiff, the probable consequences of such injury, the burden of reducing or avoiding the risk…and the possessor's degree of control over the risk-creating condition*."[18]

There are also various factors for determining whether an owner owed a duty of care to an injured person, the primary factor being foreseeability. However, foreseeability is balanced against the burden of duty to be imposed on the owner.[19 20]

The degree of foreseeability is dependent on how great or small the burden of preventing the harm that causes the injury.[21]

The factors which are likely to be the most important in determining whether a business owner is liable for a third party's COVID-19 infection that can be traced back to the premises are foreseeability and the burden of preventing the harm.

In other words, the infected person will have to show that the contraction of the virus was foreseeable during their visit to the premises in question, while also showing that the burden imposed

on the business owner to prevent the spread of the virus would not be unreasonably great.

To determine whether there was a breach of the duty of care, the test is one of reasonableness—for example, whether the business owner acted as a reasonable person in managing the property in view of the probability of injury to others.[22]

Thus, if business owners take precautions determined to be reasonable under the circumstances in an effort to ensure that their premises do not pose a risk of COVID-19 infection to third parties, they will likely be deemed not to have breached the duty of care provision of the law.

In determining whether an owner owes a duty of care, courts distinguish between claims based on misfeasance—that is, where the defendant created the risk—and nonfeasance—where the defendant failed to undertake adequate measures to prevent the risk.[23]

For COVID-19 claims, liability will likely be based on an accusation of nonfeasance.

However, if a business opens a facility in violation of a stay-at-home order, or fails to implement recommended or mandatory guidelines that are part of the order, an injured customer may be able to make a claim based on misfeasance since the business owner created the risk of COVID-19 infection by not complying with the order.

As stated previously, to establish that the breach of duty proximately caused injuries, it rests with the injured person to show that the defendant's breach of duty was a substantial factor in bringing about the harm.[24]

Thus, causation "*cannot be established on mere speculation, conjecture and inferences...*" and it will, therefore, be difficult for infected customers to prove with certainty that a visit to a specific business resulted in their contracting of the virus, particularly because of exposure from virtually anywhere.[25]

Business owners must remember that they are not required to provide absolute safety to their customers or their employees to avoid liability exposure.

Legally, they simply need to make reasonable and good faith efforts to comply with applicable government standards and guidance in effect at any given time.

To that end, employers need to stay abreast of current and evolving guidelines from the Centers for Disease Control, the Occupational Safety and Health Administration, the U.S.

Department of Labor, as well as state, county and municipal governments; keep employees informed of measures being taken to protect them; stay aware of employees' health while, at the same time, maintaining their privacy; keep employees informed of confirmed COVID-19 cases in the workplace; and, when bringing back furloughed or laid off employees, consider the provisions of the Fair Employment and Housing Act (FEHA).[26]

> "For COVID-19 claims, liability will likely be based on an accusation of nonfeasance."

Employers also need to be aware that although complying fully with state and local guidelines will provide solid defenses to a lawsuit. They may still be unable to avoid liability if a court concludes that the state and local guidelines are vague or that they should have taken greater precautions.

The long and short of it is that the ongoing COVID-19 pandemic is an ever-changing situation with laws and regulations in constant flux.

Therefore, even though lawsuits may not seem imminent, business owners must do everything they can to stay informed and avoid stepping into a legal minefield.

---

[1] Executive Order N-33-20, Executive Department State of California, available at *https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf.*

[2] Roosevelt, Margot. "Workers and customers are catching COVID-19. Should businesses escape blame?" *Los Angeles Times*, 27 August 2020, available on <*https://www.latimes.com/business/story/2020-08-27/covid-19-lawsuits-california-business-liability*>.

[3] <*https://www.Crapo.senate.gov/media/editorials/weekly-column-backing-those-leading-the-pandemic-fight*>, guest column submitted by U.S. Senator Mike Crapo, 14 September 2020.

[4] S. 4317 - 116th Congress: SAFE TO WORK Act." www. GovTrack.us.2020. December 16, 2020 <*https://www.govtrack.us/congress/bills/116/s4317*>.

[5] McConnell, Mitch. "Republicans Are Ready to Govern" 28 July 2020, available on <*https://www.republicanleader.senate.gov/newsroom/remarks/mcconnell-on-the-heals-act-republicans-are-ready-to-govern*>.

[6] SHRM Advocacy, "SHRM Supports the Safe to Work Act", August 12, 2020, available at <*https://advocacy.shrm.org/advocacy/shrm-supports-the-safe-to-work-act/?_ga=2.26536509.1260456211.1608174411-1259269225.1608174410*>.

[7] Nagele-Piazza, J.D. "Here's What Employers Need to Know About COVID-19 Liability Shield" SHRM-SCP, 4 September 2020, available at <*https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/what-employers-need-to-know-about-covid-19-liability-shields.aspx*>.

[8] Nagele-Piazza, J.D. ""Here's What Employers Need to Know About COVID-19 Liability Shield" SHRM-SCP, 4 September 2020, available at <*https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/what-employers-need-to-know-about-covid-19-liability-shields.aspx*>.

[9] Cal. Code Regs., tit. 8, § 14300.5(a).

[10] *Fruehauf Corp. v. Workmen's Compensation Appeals Bd*., 68 Cal. 2d 569, 574-575, 68 Cal. Rptr. 164, 440 P.2d 236 (1968).

[11] *LaTourette v. W.C.A.B*., 17 Cal. 4th 644, 653, 72 Cal. Rptr. 2d 217, 951 P.2d 1184 (1998).

[12] *LaTourette v. W.C.A.B*., 17 Cal. 4th 644, 655, 72 Cal. Rptr. 2d 217, 951 P.2d 1184 (1998).

[13] LaTourette v. W.C.A.B., 17 Cal. 4th 644, 654, 72 Cal. Rptr. 2d 217, 951 P.2d 1184 (1998).

[14] *LaTourette v. W.C.A.B*., 17 Cal. 4th 644, 654, 72 Cal. Rptr. 2d 217, 951 P.2d 1184 (1998).

[15] Executive Order N-62-20, Executive Department State of California, available at *https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf.*

[16] Senate Bill No. 1159, Worker's Compensation: COVID-19: critical workers, 18 September 2020.

[17] *Civ.* Code, § 1714(a).

[18] *Sprecher v. Adamson Companies*, 30 Cal. 3d 358, 360, 372, 178 Cal. Rptr. 783, 636 P.2d 1121 (1981); see also Miller & Starr California Real Estate 4th § 19:42.

[19] *Ann M. v. Pacific Plaza Shopping Center*, 6 Cal. 4th 666, 676, 25 Cal. Rptr. 2d 137, 863 P.2d 207 (1993) (disapproved of on other grounds by, *Reid v. Google, Inc*., 50 Cal. 4th 512, 113 Cal. Rptr. 3d 327, 235 P.3d 988 (2010)).

[20] *Sakai v. Massco Investments, LLC*, 20 Cal. App. 5th 1178, 1188, 229 Cal. Rptr. 3d 775 (2d Dist. 2018).

[21] *Vasilenko v. Grace Family Church*, 3 Cal. 5th 1077, 1092, 224 Cal. Rptr. 3d 846, 404 P.3d 1196 (Cal. 2017).

[22] *Seaber v. Hotel Del Coronado*, 1 Cal. App. 4th 481, 488, 2 Cal. Rptr. 2d 405 (4th Dist. 1991).

[23] *Seo v. All-Makes Overhead Doors*, 97 Cal. App. 4th 1193, 1202-1203, 119 Cal. Rptr. 2d 160 (2d Dist. 2002).

[24] *Nola M. v. University of Southern California,* 16 Cal. App. 4th 421, 427, 20 Cal. Rptr. 2d 97, 83 Ed. Law Rep. 316 (2d Dist. 1993).

[25] *Saelzler v. Advanced Group* 400, 25 Cal. 4th 763, 775, 107 Cal. Rptr. 2d 617, 23 P.3d 1143 (2001).

[26] Cal. Gov. Code § 12940.

Valley Lawyer

BAR NOTES

NEW DYNAMEX RULING: The California Supreme Court's 2018 decision in *Dynamex Operations West, Inc. v. Superior Court* dramatically changed the standard for determining whether workers in California were properly classified as independent contractors.

The decision created a new ABC test that has subsequently been codified as AB 5. A significant question left open was whether *Dynamex* would apply retroactively.

In *Vasquez v. Jan-Pro Franchising International, Inc.*, the Court has concluded that Dynamex does indeed apply retroactively.

Rejecting an argument that the "ABC" test created new law and therefore should not be applied retroactively, the Court determined that the decision did nothing more than provide an authoritative definition of what it means to "suffer or permit to work."

The decision means that *Dynamex* will be applied in independent contractor misclassification cases that were already pending when *Dynamex* was first issued. And it also means that it will be applied to pre-Dynamex conduct in new lawsuits that might still be filed, subject to the applicable statutes of limitations for such claims.

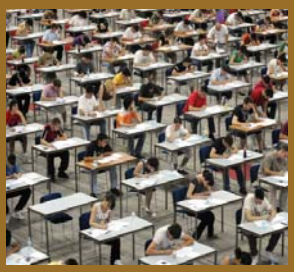
With *Dynamex*, AB 5 and now *Vasquez*, one thing is certain—it is more important than ever for companies that do businesses in California to review their relationships with workers classified as independent contractors to try to avoid litigation or defend a gainst it.

COVID-19 FASTCASE RESOURCE HUB: In light of the COVID-19 epidemic, the Fastcase team is working with our partners to ensure lawyers and volunteers have access to complimentary resources available to them. If at any time you're experiencing difficulty logging into your account, please contact the Fastcase team at relief@fastcase.com and access will be provided.

Fastcase has created a COVID-19 resource hub, bringing together free legislative and government updates and COVID-19 content across leading news media sources. Visit: https://www.fastcase.com/covid19/

For local Bench Bar updates visit:
https://sfvba.org/bench-bar/ or
https://sfvba.org/covid-19-corona-virus-updates/

NEW BAR EXAM DECISION: A State Bar of California panel has approved a plan to allow the potential licensing of new lawyers who narrowly failed bar exams in recent years, reports Bloomberg Law.



The attorneys would be admitted without re-taking the exams, under the plan, which still requires approval from the California Supreme Court. The Bar's Board of Trustees executive committee unanimously approved the proposal recently at a Zoom meeting, hailing the plan as "a needed fix for exam takers whose margin of failure in the tests was narrow."

The vote is the latest in a series of steps by state officials in response to the COVID-19 pandemic.

The plan would expand the existing Provisional Licensure Program and apply to individuals who scored 1390 or higher on a bar exam from July of 2015 through February of 2020. That would effectively make retroactive the state Supreme Court's recent decision to lower the passing score from 1440 to 1390.

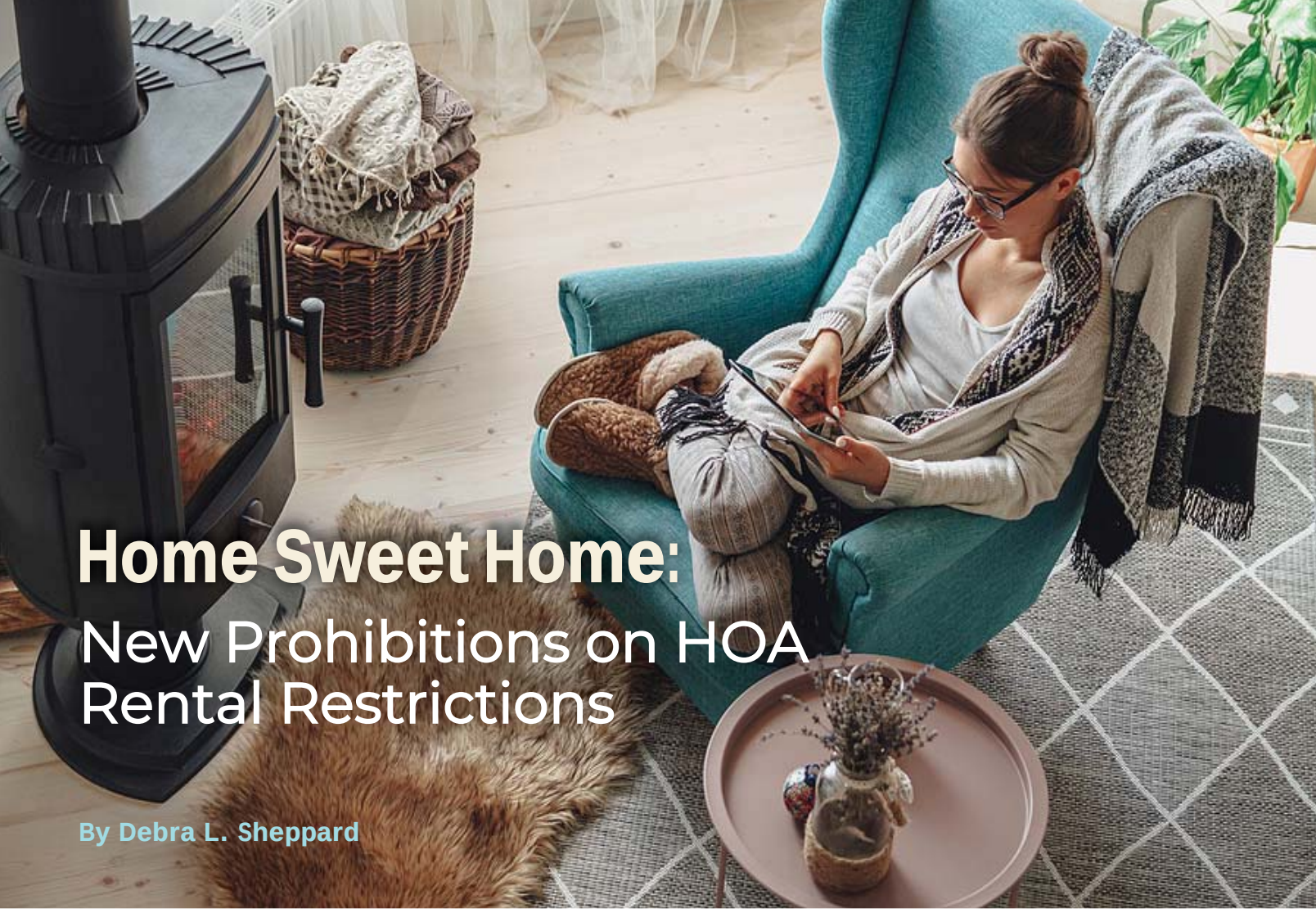
It would apply to the test takers regardless of when they graduated from law school. The graduates, however, would first need to complete between 360 and 600 hours of supervised legal practice, depending on which of two options the court chooses, should it approve the proposal.

The graduates would need to receive a positive evaluation by an eligible supervising lawyer. These lawyers would include judges in the California judicial branch.

The high court, if it approves the plan, will back off its previous refusal to allow the new passing score to be applied retroactively.

If approved, the expansion would make more than 2,000 additional individuals eligible to apply for provisional licensing to practice law in California.

QUOTABLE QUOTE: "*For there is but one essential justice which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.*" — Marcus Tullius Cicero



Home Sweet Home:
New Prohibitions on HOA Rental Restrictions

By Debra L. Sheppard

OVER THE PAST SEVERAL YEARS, THE TREND with common interest developments or homeowners associations (HOAs) was to amend their governing documents to prohibit short-term rentals and restrict the percentage of lots or units that could be rented.

Once that percentage limitation was reached, owners would be required to join a waiting list to be able to rent, absent some hardship exemption granted by the association Board.

HOAs seek restrictions on rentals because they tend to be more transient than owner-occupied units and lots and because insurance companies and lenders have wanted to see no more than approximately 25 percent to 30 percent rentals at a maximum, except for those involving FHA loans.

In addition, renters frequently require more enforcement action because of an unfortunately common failure to abide by the community's rules and restrictions and tend to not exercise the care for common area amenities usually exhibited by owners.

Zeroing In On HOAs

Most recently, the State legislature has set its sights on HOAs.

In 2019, for example, HOAs were required by law to amend or adopt new election rules that complied with changes to elections, including prohibiting managers from acting as inspectors of election, eliminating many qualifications for running for the board, and limiting elections by acclamation to HOAs with 6,000 or more separate interests.

More recently, another new law requires HOAs to hire a licensed structural engineer or architect to inspect exterior elevated elements such as balconies.

While the California Civil Code had previously prohibited rental restrictions that did not allow renting and it applied to only governing documents amended after 2012, the AB 3182

Debra L. Sheppard is a sole practitioner focusing on all aspects of community association representation as well as litigation matters, including injunctions, against owners and tenants who are in violation of the governing documents and the defense of associations. She can be reached at dsheppard@sheppard-law.com.

revisions to that particular Section removed the limitation to governing documents after 2012.[1]

AB 3182 adds a new section to the Civil Code that amends Section 4740 and does the following:

- Makes governing documents, including rules, that prohibit, have the effect of prohibiting, or contain unreasonable rental restrictions unenforceable effective January 1, 2021, except for provisions that restrict the rental or lease of separate interests to less than 25 percent of the separate interests and prohibit transient or short-term rentals for a period of 30 days or less;

- States that an accessory dwelling or junior accessory dwelling is not a separate unit (in planned unit developments only-this doesn't apply to condominiums);

- A separate interest, accessory dwelling unit or junior accessory dwelling unit is not considered rented if occupied by the owner;

- After January 1, 2021, an association may not enforce any provision which is in violation of the law and an association must amend any rental restrictions not in compliance with the law prior to December 31, 2021;

- A willful violation of the law makes the association liable to the applicant or other party for actual damages (which could include lost rental income) and a penalty of $1,000. A willful violation will include enforcing illegal rental restrictions or failing to amend the governing documents that are illegal;

- Pursuant to the Civil Code, the law does not change the right of owners who acquired title to their separate interest before the effective date of the new law to rent their property. If the HOA currently has a rental restriction limiting rentals to 25 percent of the total lots or units, owners who acquired title after the rental restriction was approved by the owners are subject to the 25 percent limitation;[2]

- This Section must be read with Civil Code Section 4740. Only new Owners will be subject to rental restrictions once an HOA amends its rental restrictions to comply with the law and owners who rent currently can continue to rent. Prior to renting, an owner shall provide the HOA with verification of the date the owner acquired title to the lot or unit and the name and contact information for the prospective tenant or lessee;

- Civil Code Section 4740 was amended to remove the provision that allowed Owners to agree to be subject to rental restrictions. The provision which made the Section applicable to a provision in a governing document or amendment that becomes effective after January 1, 2012, was also eliminated; and,

- If an HOA has a 25 percent rental limit in its current governing documents, the renters that are currently renting can continue to rent and the HOA is protected from short-term or any further rentals if the number of rental units are at the rental limit.[3]

Differences in Dwelling Units

Effective January 1, Section 4751 was added to the Civil Code voiding any provision in CC&Rs that prohibits the construction or use of an accessory dwelling unit (ADU) or junior accessory dwelling unit (JDU) on a lot zoned for single-family residential use that meets the requirements of the Government Code.[4]

An ADU is a unit that measures no more than 1,200 square feet, while a JDU is a unit that measures no more than 500 square feet in size and contained entirely within an existing single-family structure.

Local governments have the authority by ordinance to allow ADUs and JDUs. Each municipal or county Municipal Code will need to be consulted to determine whether that city or county allows such dwellings.

Should a city that has not adopted an ordinance receive an application for a permit to create an ADU, the application must be approved or disapproved without discretionary review or a hearing within 60 days.

As a result, whether or not there is a local ordinance adopted, an owner can apply for a permit for an ADU or JDU.

Advantages and Disadvantages

The advantage of the new law is that it will, including the addition of ADUs and JDUs, create more rental units in the state.

According to the author of AB 3182, State Assemblymember Phil Ting, the author of AB 3182:

> *"We must marshal all available resources to address the housing and homelessness crisis. There are millions of homes across the state that have the potential to be rented to Californians in need of housing, are prohibited from being leased under outdated homeowners association (HOA) rules. AB 3182 prohibits rental bans in HOAs to allow homeowners who want to rent out their homes."*

The Civil Code states that ADUs and JDUs shall not be considered as separate interests. This means that three families could potentially reside on one lot.[5]

One of the arguments in opposition to the bill was put forward by the Community Associations Institute-California Legislative Action Committee, a group representing Common Interest Developments.

According to the group,

> *"AB 3182 will create a couple of major issues for associations, especially condominium associations. First, we are concerned it will jeopardize the opportunity for an association to access financing for critical maintenance and infrastructure issues that would otherwise need to be funded by assessment increases. It could also jeopardize the opportunity for first time homebuyers who rely on FHA loans, veterans who rely on VA loans and create issues for seniors seeking to refinance through reverse mortgages... AB 3182 will also increase investment buying within condominium associations because of the ability to rent multiple units."*

One of the disadvantages of the new law is—depending upon where the HOA is located—the potential decrease in property values due to increased density.

For example, if the Association is located in an area frequented by tourists, there will probably be no change in property values, while other HOAs will become more like apartment buildings, requiring enhanced management of parking, water usage, and the maintenance of common area amenities.

Another disadvantage is the opposite of increasing rental units—that is, the opportunity for homeownership for families will decrease due to the reduction in available owner-occupied units or lots.

The new law is expected to increase litigation on a court system already hobbled by the COVID-19 pandemic with the penalties and opportunity for reimbursement of legal fees making litigation appealing to those who want to take advantage of the situation.

Other negative impacts of the new law include a possible decline in the condition of the separate interests as investors don't want to pay increased assessments; more enforcement issues as tenants fail to obey rules; less participation by owners since more will be off-site owners of units; increased density as rentals of accessory dwelling units and junior dwelling units will not count as rentals with respect to a percentage rental limitation if the owner lives in any of the units; the increased scarcity of parking; and facilities possibly being over-taxed.

Condominium associations will continue to pay for the water used by all units and sewer systems designed to accommodate a certain number of households will be burdened with the addition of more households to the systems.

Finally, the new law favors ADUs and JDUs by amending the Government Code to streamline the application process and by promoting a public policy that encourages those dwellings.[6]

There could, however, be increased litigation due to HOAs trying to have some management control over their property or renters or owners who rent filing suit based upon an HOA not understanding the new law and enforcing illegal rental restrictions.

ADUs and JDUs are not considered rentals when enforcing a percentage rental restriction, so long as the owner resides in one of the units or dwellings. It is anticipated that there will be many more ADUs and JDUs being built because of this new law and the favorable provisions in the Government Code.

This bill is expected to provide some relief to the state's chronic housing shortage, but serve as a challenge for HOAs.

An End-Around the New Law

The original law had a loophole that allowed rental restrictions as long as they didn't prohibit all rental activity and allowed existing rental bans to be grandfathered in if they were in effect at the time an individual purchased their unit.

These loopholes have been closed by the new law.[7]

If an HOA lacks any rental restrictions, rules can be adopted that comply with the new law, but will only apply to new owners with all current owners able to rent. Rental provisions should ideally be included in the Declaration of Covenants, Conditions and Restrictions (CC&Rs) so that purchasers have notice of the restriction.

However, adopting new Rules could be the answer if an HOA doesn't place any restrictions on rentals and wishes to implement some without the lengthy and expensive process of amending the CC&Rs.

What Provisions Are Reasonable?

With the exception of allowing minimum rental terms of 30 days and a 25 percent or higher rental limit, what is considered reasonable is not expressly defined.

Other restrictions may be reasonable but are not specified and included in the statute, which leaves HOAs at risk for violating the law.

The HOA's defense, however, may balance on the assertion that the Association did not *willfully* violate the law so the penalty is not applicable.

Some restrictions very likely to be held reasonable by the court. For example:

- Tenants should be required to comply with governing documents.
- Owners should provide the Association with the names, vehicle identification and other information about who is living in the unit for use in case of an emergency and to monitor any percentage rental restrictions. Currently, a statute is on the books that requires an association to solicit annual notices from each owner as to whether the unit is rented.[8]
- Provisions prohibiting Airbnbs and other vacation rentals of less than 30 days in duration are enforceable.

While others may well be considered unreasonable. They include:

- Any provisions requiring that owners of rental units pay any fee, such as move-in and move–out fees.
- Any provision which discriminates against renters.
- Mandates minimum occupancy limits by a purchaser. For example, a provision that requires a purchaser to occupy the unit or lot for one year following the purchase is probably unreasonable because it makes that unit or lot unavailable for rental.

HOAs Moving Forward

Every HOA should have its governing documents reviewed by a legal professional to ensure that they do not violate the new law.

Any amendments that need to be made should be addressed as soon as possible. Granted, it can be a time-consuming process, but every day that an HOA is enforcing illegal rental restrictions, the greater the likelihood of extensive litigation.

After spending 2020 amending election rules to comply with the new law, this year HOAs will have to amend their CC&Rs—a process that is nearly the same as elections for directors and requires the appointment of an inspector of elections.

The HOA is required to prepare the language to amend the CC&Rs, send a 60-day notice to the owners of the date of the meeting to count the amendment ballots, send out the ballots, and tally the ballots if a quorum is reached.

If, however, a quorum is not reached, the meeting will have to be adjourned. The bare minimum of time in which to hold a meeting to amend the CC&Rs is 60 days.

Amending the Rules is a simpler process and takes at least 28 days for the membership to comment on the proposed Rule.

Some associations will already have a 25 percent limitation on legal rentals. These will not require amending. However, many CC&Rs require a 12-month minimum lease term to discourage frequent moves and these will need to be amended to require a 30-day minimum lease term.

Amending the governing documents in HOAs with a large number of separate interests and a high percentage of votes required for approval may well be very difficult, if not impossible.

There is a process by which an HOA can seek court approval of amendments if at least a majority of the owners approve the amendment. That process carries an additional cost that HOAs may not be able to afford.

Any HOA that already has a large number of rentals should look to the future and amend its CC&Rs to include a 25 percent limitation. Such action will eventually discourage investors because, when rental units or lots sell and the percentage drops to the 25 percent limit, future purchasers will have to be added to the waiting list to rent.

The Consequences of a Failure to Act

The most obvious is to open the HOA to litigation.

However, it is possible that if an HOA at least attempts to amend its governing documents and fails, it will have a defense against any litigation because the statute requires a willful failure to amend before a penalty can be imposed.

As a rule, though, an HOA should never enforce any illegal restrictions as there are now monetary consequences of doing so.

Are there any open questions about the interpretation of the new law? Yes, there are many. They include:

- Are courts going to determine that an HOA that hasn't amended its governing documents but has tried will have willfully violated the law?
- Will provisions which restrict vacation and short-term rentals outright apply to short-term rentals over 30 days?
- Will associations be able to limit the number of units or lots any one purchaser or owner can buy in order to prevent increased rentals?
- Will rental restrictions included in Rules have the same effect as those included in CC&Rs?
- Can garage space be converted into a JDU requiring vehicles to be parked outside or on the street? And,
- Will all occupants of ADUs and JDUs be required to be age 55 or over for communities that are restricted to this age group?

It remains to be seen how this new law will affect HOA living. While it may be favored as a way to increase rental units within California, it constitutes an additional factor that will affect the management of their communities that HOAs cannot control.

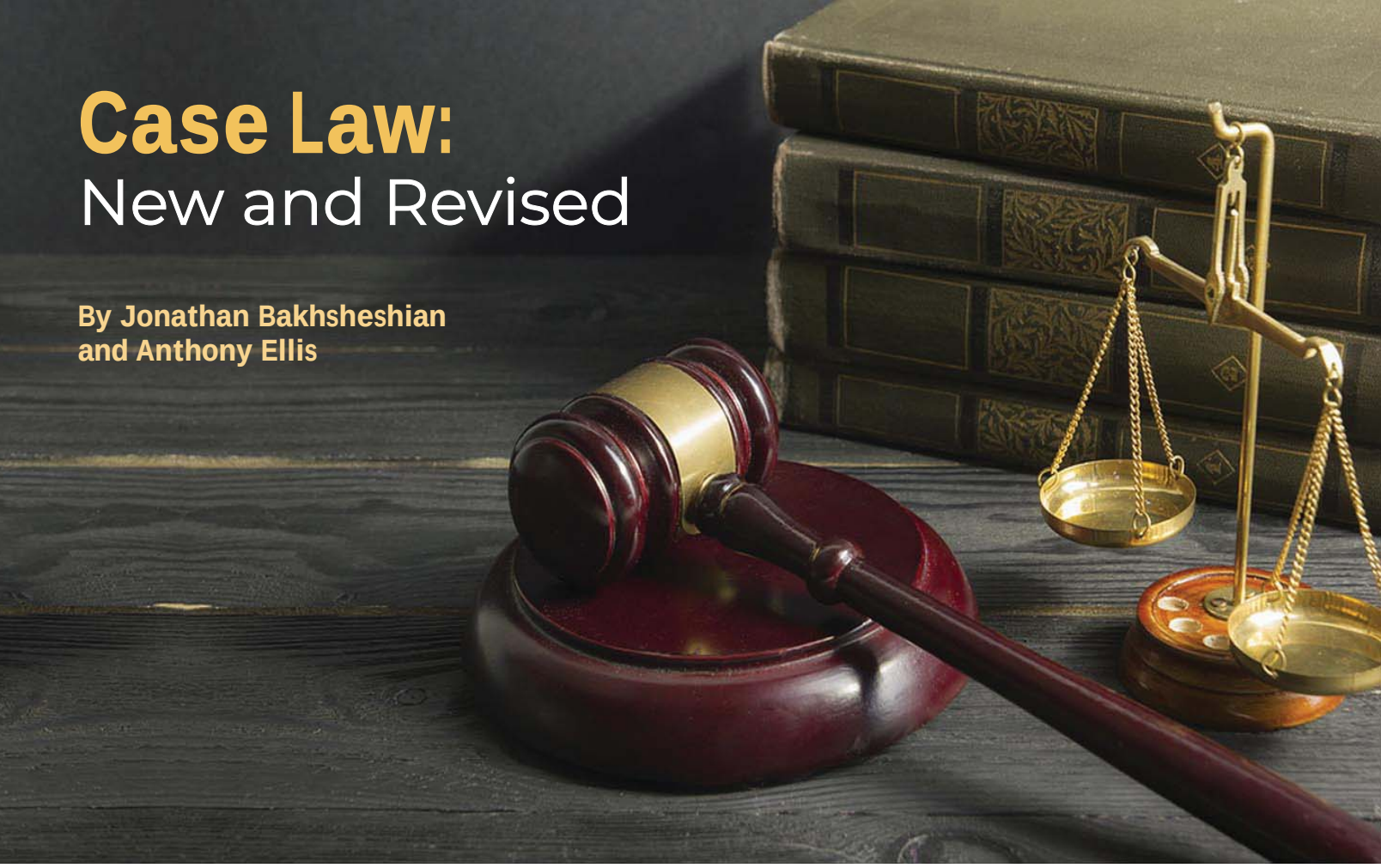
In years past, the state legislature provided incentives to encourage first-time buyers to purchase a condominium or home.

The question is will the legislature have second thoughts and pass a follow-up bill that will strike a balance between promoting homeownership as a desired goal again and increasing the state's limited supply of housing?

---

[1] Civil Code § 4740.
[2] *Id.*
[3] *Id.* § 4741.
[4] Government Code Sections 65852.2 or 65852.22.
[5] Civil Code § 4741.
[6] Government Code § 65852.2.
[7] Civil Code § 4740.
[8] *Id.*4041(a) (4).

Case Law: New and Revised



By Jonathan Bakhsheshian and Anthony Ellis

THE POST-PANDEMIC YEAR of 2021 has unveiled a handful of new case law that will substantially affect how litigators may practice this year and beyond.

Recent prevailing case laws provide guidance to various issues involving arbitration, discovery, evidence, and trial.

Disbarment

The most relevant and important decision that will substantially change the way attorneys in California practice is that they must be cautious in signing releases.

For example, many releases require a confidentiality clause, non-disparagement clause, liquidated damages clause, and even a hold harmless provision.

Typically, a hold harmless provision has become standard so long as the client agrees to indemnify, but recently, there has been a shift where the releases are demanding that a plaintiff's counsel indemnify the other party against an action brought against them by third parties—for example, Medicare—to recover on a lien from the case.

However, this specific provision and request is improper and sanctionable—the Los Angeles County Bar Association (LACBA) Professional Responsibility and Ethics Committee issued an Ethics Opinion on the matter.[1]

In its Opinion, the Association confirmed that such an agreement is prohibited as an improper payment of the client's personal and business expenses under California State Bar Rules (CSBR).[2]

It also determined that such an agreement would create a conflict of interest between the lawyer and the client by compromising the lawyer's exercise of independent professional judgment under CSBR, and that the representation itself would require the lawyer to withdraw pursuant to CSBR.[3] [4]

Many of these confidentiality, liquidated damages, and non-disparagement clauses almost preclude, if not limit, an attorney from representing another person in a

Jonathan Bakhsheshian and Anthony Ellis are partners at Ellis & Bakh, LLP, in Sherman Oaks. They each focus on wrongful death, premises liability, products liability, and catastrophic injury litigation. They can be reached, respectively, at jonathan@ellisbakh.com and anthony@ellisbakh.com.

proceeding against the party whom the clauses are against.

The California State Bar opined that a settlement prohibiting an attorney from using information about the opposing party in subsequent actions against that party would improperly interfere with an attorney's practice of law.

Such terms violate California State Bar Rules because they would restrict the attorney's right to practice law and would require the obligating settling party to pursue a conflict of interest claim against their attorney.[5]

Most notably, the opposing attorney who proposes the language in the release, or even forwards a draft for review which includes any arrangements, discussions, or written agreements that would violate these rules, would in itself violate the Rules, which prohibit a lawyer from soliciting or inducing a violation of the rules of Professional Conduct or the State Bar Act.

Such aggravated improper conduct could require mandatory reporting to the State Bar.[6]

Even if an attorney is signing as to form and content, they may still be held liable for numerous State Bar violations.

In *Monster Energy Co. v. Schechter*, the California Supreme Court stated that counsel's signature approving a settlement agreement, even as to form and content, still leaves the door open to the fact that the attorney may still be bound by all the terms of the release, including any confidentiality, liquidated damages, and non-disparagement clauses.[7]

As such, according to the California Supreme Court, if the parties clarify the intent that the attorneys should be bound by the release as well, then signing is sufficient to approving the agreement as to form and content, which in turn, would tie the attorney to all the terms.

With this knowledge, attorneys are now in a bind to either be compelled to sign a release, which may well violate several California State Bar Rules and restrict their future practice of law under confidentiality clauses, or fail to settle the claim.

Once the client is notified of a monetary settlement, it is highly probable that the client will want to settle. A dilemma arises when the attorney disputing the release cannot ethically settle the case even when the client presents instructions to do so.

Such conflicts interfere with the client's control over the settlement and place the attorney in an untenable situation.

Moving forward, releases should be carefully reviewed for any ethical or State Bar violations with the terms carefully negotiated to ensure no violations are unwittingly committed.

Electronic Signatures

While in the past year, the pandemic struck worldwide, it has made it difficult for everyone to get documents properly signed. Electronic signatures on documents have become more prevalent. However, in litigation, they require more than just a standard electronic signature.

In the case of *Fabian v. Renovate Am., Inc*., the parties signed an arbitration agreement as part of a contract with one of the parties signing the contract via DocuSign, an online platform that used for electronic signatures.

The trial court denied, and the appellate court confirmed, that the electronic signature was invalid and thus, the arbitration agreement was unenforceable.[8]

The appellate court noted that the moving party to compel arbitration failed to properly validate the signature, and there simply was not enough evidence to prove that the responding party actually signed the document.

This raises concerns for those who may rely on electronic signatures for everything from intake to discovery and settlement releases. The takeaway here is not that electronic signatures are invalid; it is that you need substantial evidence of the true identity of the signatory.

For example, many software programs such as AdobePDF will date stamp the exact date, time, location, and address of where the document was signed, while documents can be emailed to the recipient's known email address with confirmation of the recipient, and later follow-up.

The best practice is to have a witness sign the documents as well, likely providing a rebuttable presumption of the signature.

Under/Uninsured Motorist Arbitration Costs

One of the best tools used in settling a case is shifting the burden of costs to the opposing party.

For many years the insurance companies have contended that the Code of Civil Procedure (CCP) offers were not allowed in first party

arbitration claims and that the insurance policy specifically states that the parties are to share the cost of arbitration.[9]

However, in *Storm v. The Standard Fire Insurance Company*, the courts confirmed that the Code offers are, in fact, valid and it does not contradict the terms of the insurance policy.[10] [11]

Additionally, the arbitrator is not required to award the costs in the final award, neither will the prevailing party be precluded to obtain costs post-arbitration if it is not awarded in the final award from arbitration.

Rather, the prevailing party can file a motion in the trial court thereafter to enforce CCP rules to offer and recover all the relevant costs.[12]

Moving forward, the CCP now holds a lot more weight in arbitrations with first party carriers.[13]

Attorney's Fees

Not much has changed with attorney fees, but some principles have been stressed.

In *Hance v. Super Store Industries*, the California Supreme Court nearly threw out a retainer and agreement for division of attorney's fees between parties and their client because the original retainer violated the Rules of Professional Conduct specifically because the retainer failed to notify the parties that the attorney did not carry professional liability insurance.[14]

As such, the court had full discretion to determine the division of fees between the parties. Losing attorney's fees for misinforming clients seems the least of concerns when facing a potential bar violation.

Retainers should be bulletproof and abide by all of the rules of the California State Bar.

Requests for Admissions Costs

Post-trial Requests for Admissions costs have proven to be a strong litigation tool.

Such Requests are used to limit the issues to be tried and assist the parties in limiting the number of issues possibly requiring the hiring of expert witnesses and other ancillary expenses.

However, the denial of a request does not mean that if a substantial amount is spent to prove otherwise, that all the costs will be awarded thereafter.

In *Universal Home Improvement, Inc. v. Robertson*, the court focused on the wording of the Code of Civil Procedure, specifically on the word reasonable. It held that if the party failing to make the admission had reasonable grounds to believe that the party would prevail on the matter, then Requests for Admission may not lead to costs.[15] [16]

> "Once the client is notified of a monetary settlement, it is highly probable that the client will want to settle."

Simply responding to the contrary is not sufficient. The best practice would induce the party propounding the Requests for Admission to provide all the evidence to the opposing side so that they can reasonably be led to the same conclusion.

Thus, if they disagree even when evidence is provided to the contrary, then it is much easier to prove the elements required to recover costs.

Failure to Meet and Confer

There are many ways to deal with the requirement to meet and confer. For some, their strategy is to simply not do it at all.

It is a fact that there are attorneys who fail to fulfill the meet and confer requirements—specifically, those who fail to provide both factual and legal arguments to support their position.

Such attorneys, more often than not, simply have nothing to support their position other than their supervisors or clients forcing them to file unnecessary, unlawful, and improper motions. Nonetheless, the failure to meet and confer is not enough to dismiss a motion in its entirety.

In *Dumas v. Los Angeles County Board of Supervisors*, the court confirmed the same—a failure to follow the meet and confer requirements is not enough to dispose the motion, but will and can be used in granting sanctions against the party who failed to meet and confer.[17]

Such a procedural issue can be countered by opposing the motion in whole as well, and not focusing on any procedural defects, as they—with the exception of a timing issue—are not always solid enough to defeat the motion in its entirety.

Arbitrator's Power

Depending on the severity and complexity of the issues involved, many cases are bifurcated or even trifurcates for trial or arbitration.

This typically happens in cases where the issues of liability, punitive damages, and attorney's fees can be separated to direct attention to each individual issue.

In *Skinner v. Ken's Foods, Inc.*, the appellate court confirmed that if the arbitrator rules on one of the three issues, then the arbitrator is not bound by that final ruling until all three issues have been determined.[18]

For example, if the arbitrator rules on the issue of liability and punitive damages, but, while discussing attorney fees, the arbitrator changes the ruling on whether the party is entitled to punitive damages, the arbitrator is acting within their discretion.

This should not dissuade trifurcating or bifurcating issues for trial or arbitration, but should serve as a caution to tread lightly in such cases as the determination of one of the issues does not mean that the arbitration is over.

Evidence that may be used in one of the issues/stages may shed light on other issues/stages of the arbitration, causing a conflict of information that requires an arbitrator to overturn their previous decision.

In short, until all issues are resolved, and a final award is confirmed, the arbitrator has full discretion to make any changes on a ruling on any of the issues.

Defeating Motions for Summary Judgments

To defeat a motion for summary judgment, the opposing party must show a genuine issue for trial. Often, reliance is put on our experts' testimony and/or declarations in support of the motion. Too often, attorneys forget that just simply attaching the experts' testimony or declaration is sufficient. But this is not always the case.

In *Lowery v. Kindred Healthcare Operating, Inc*., an expert's opinion was disqualified in a reply brief to the motion for summary judgment and the opposing party lost the motion.[19]

The appellate court confirmed the same, and the party had no other recourse. The court focused on the expert's qualifications to testify and, in this case, concluded that the expert did not have adequate knowledge or expertise to testify on the matter before the court.

Against this opinion was another expert's opinion whose declaration stated in detail, the experience and medical literature which supported the expert's opinion. The declaration on its own was in stark contrast with the losing party's expert.

Just like preparing for trial, any evidence used in a summary judgment is subject to the same scrutiny as in trial as an expert's opinion must be supported with their declaration, while the individual's qualifications should be detailed with resumes, articles written in professional publications, and as much additional information as is needed to support the expert's opinion.

Judgment Against Doe DBAs

Suing defendants is not difficult, but recovering monetary compensation post-judgment is always a difficult challenge.

Through discovery or post-lawsuit, if a defendant opens new DBAs—or if prior ones had not been uncovered—counsel may want to collect from their other businesses. This is not difficult, nor new case law, but confirms an issue that occurs quite often.

After a lawsuit is filed, a motion to add an alter ego of the defendant need be done either in the original action or after a judgment is entered.

The Court in *Lopez v. Escamilla*, confirmed that both procedural attempts would be acceptable as the addition of an alter ego, or the altering of the judgment, are not barred by the statute of limitations.[20]

Nonetheless, best practice would be to immediately file either motion immediately upon notice of the DBA.

Civility

There are many ways to address issues and contentions with the opposing side of a lawsuit—countless emails, letters, objections, and file motions and demand sanctions, for example.

However, such actions can become tedious, frustrating and time-consuming, and sometimes can result in unnecessary and sometimes contentious disputes with opposing counsel.

It is important to understand what exactly civility is and what it is not, as it is more than just being nice to the other side and giving them additional time to respond or working with them to schedule a conference call.

Civility includes taking the time to call the other side, explaining your position in a respectful matter, and reaching a compromise that protects both clients' rights.

It is strongly advised to pick up the phone and call opposing counsel to calmly and rationally discuss the issues before surrendering to the urge to sending a threatening letter or email, or saying something regrettable.

More likely than not, a dispute can be resolved with a brief, civil conversation that will save hours of law and motion. Such a correct course can also serve as an opportunity to establish a rapport and a professional relationship with your adversary.

Civility is an invaluable key in advocating for any client and will garner a lot more to further a legal career than habitually resorting to unnecessary law and motion and sanctions.

---

[1] Los Angeles County Bar Association Professional Responsibility and Ethics Committee, Opinion No. 532 (2019).
[2] California State Bar Rule 1.8.5(a).
[3] *Id.* 1.7(b).
[4] *Id.* 1.16(a)(2).
[5] *Id.* 1-500.
[6] *Id.* 8.4(a).
[7] *Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781.
[8] *Fabian v. Renovate Am., Inc*. (2019) 42 Cal. App. 5th 1062.
[9] California Code of Civil Procedure § 998.
[10] *Storm v. The Standard Fire Insurance Company* (2020) 52 Cal.App.5th 636.
[11] California Code of Civil Procedure § 998
[12] *Id.* § 998.
[13] *Id.*
[14] *Hance v. Super Store Industries* (2020) 44 Cal. App. 5th 676.
[15] *Universal Home Improvement, Inc. v. Robertson* (2020) 51 Cal.App.5th 116.
[16] California Code of Civil Procedure 2033.420.
[17] *Dumas v. Los Angeles County Board of Supervisors* (2020) 45 Cal. App. 5th 348.
[18] *Skinner v. Ken's Foods, Inc*. (2020) 53 Cal. App. 5th 938.
[19] *Lowery v. Kindred Healthcare Operating, Inc*. (2020) 49 Cal.App.5th 119.
[20] *Lopez v. Escamilla* (2020) 48 Cal.App.5th 763.

Referring the Best Attorneys Since 1948

The Attorney Referral Service of the SFVBA is a valuable service, one that operates for the direct purpose of referring potential clients to qualified attorneys. It also pays dividends to the attorneys involved. Many of the cases referred by the ARS earn significant fees for panel attorneys.

Programs

- Senior Citizen Legal Services
- Modest Means Program
- Speaker Bureau
- Family Law Limited Scope Representation

Hablamos Español

Attorney Referral Service

San Fernando Valley Bar Association

MEETS ABA STANDARDS FOR LAWYER REFERRAL
AMERICAN BAR ASSOCIATION
THE RIGHT CALL FOR THE RIGHT LAWYER

Certified Lawyer Referral Service

(818) 340-4529

www.SFVBAreferral.com

A Salute

MATTHEW A. BREDDAN
ARS Chair

MBreddan@ReapeRickett.com

ATTORNEY LEEORA B. MORADI was born in Tehran, Iran and came to the United States when she was five years old.

At the age of six, she decided that she wanted to become an attorney, when she got excited about the law while spending hours in front of the television watching episodes of *The People's Court* with the legendary Judge Joseph Wapner.

> "I did some research and liked what the SVBA offered, including the MCLE programs, networking, community outreach programs and the referral program."

Moradi attended University of California, Los Angeles, graduating with a degree in sociology before attending law school at the University of La Verne.

Following law school and passing the Bar exam, she worked at a personal injury firm. After learning the ins-and-outs of personal injury law and gaining much experience in the field, she met a hearing representative who introduced her to the field of workers' compensation.

A resident of the San Fernando Valley, her practice has grown through the years.

For ten years, Moradi ran the entire workers compensation department as lead attorney for the personal injury firm and, in 2010, branched out and started her own practice.

As a sole practitioner with offices in Van Nuys, she concluded that she would need to network to generate leads for prospective clients.

In 2016, Moradi joined the San Fernando Valley Bar Association and became involved with the Attorney Referral Service.

"I did some research and liked what the SVBA offered, including the MCLE programs, networking, community outreach programs and the referral program," she said.

Joining the ARS helped her accumulate clientele, saying that she "loves the process the ARS refers clients…and how well vetted the leads are, which in turn causes a higher retention percentage."

After joining the ARS, Moradi has participated in various events to promote access to justice in the Valley community, including the SFVBA's *Blanket the Homeless* legal clinic, *Pro Bono Day* and *Law Day* programs.

The Attorney Referral Service salutes her for her community outreach work and is happy to be part of her professional and personal journey.

Valley Community Legal Foundation
of the San Fernando Valley Bar Association

CHARITY BEGINS WITH YOU

THE SAN FERNANDO VALLEY LEGAL COMMUNITY

- CHARITABLE ARM OF THE SFVBA
- SUPPORTING LEGAL NEEDS OF VALLEY YOUTH, DOMESTIC VIOLENCE VICTIMS, AND VETERANS
- WORKING WITH JUDGES AND OTHERS IN THE VALLEY LEGAL COMMUNITY
- SPONSORING TEEN COURT CLUBS AND LAW MAGNETS AT 9 VALLEY HIGH SCHOOLS
- PROVIDING EDUCATIONAL GRANTS FOR LEGAL CAREERS
- SUPPORTING LAW-RELATED PROJECTS IN THE VALLEY
- ASSISTING VALLEY RESIDENTS IN NEED

FUNDED BY DONATIONS FROM PEOPLE LIKE YOU

VCLF SUPPORTS THE FOLLOWING ORGANIZATIONS

CASA Court Appointed Special Advocates for Children · Haven Hills · Boys & Girls Clubs of San Fernando Valley · PESA Parents Educators / Teachers & Students in Action · the Y West Valley Family YMCA · Comfort For Court Kids, Inc. · The Ken Project · Boys & Girls Clubs of Greater Los Angeles · Blanket the Homeless

RECENT SCHOLARSHIP RECIPIENTS INCLUDE STUDENTS AT

UWLA University of West Los Angeles · Pierce College · Southwestern Law School · James Monroe High School Law & Government Magnet

To donate to the VCLF or to learn more, visit
www.thevclf.org
and help us make a difference in our community

VCLF Valley Community Legal Foundation

San Fernando Valley Bar Association founded in 1926

The Value of Volunteerism

PATRICIA L. McCABE
VCLF Vice President
patricia@mccabedisabilitylaw.com

IT GOES WITHOUT SAYING THAT MOST OF US ARE grateful that 2020 is now behind us.

The beginning of a year is a time that many of us focus on changes we can make in our lives or businesses.

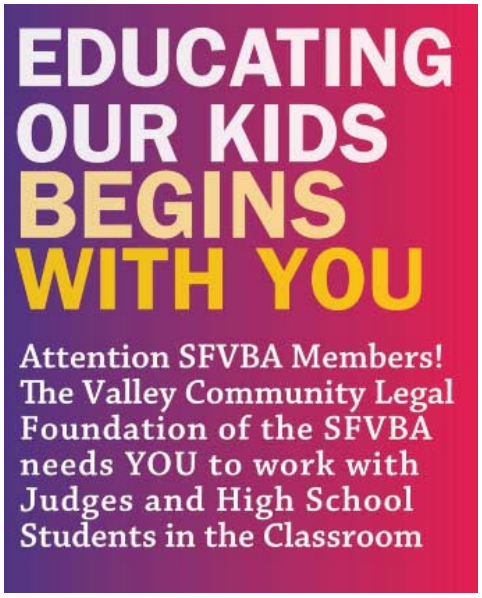
In this time of renewal, here are a few ideas that you can use to reengage and revitalize in 2021. First, volunteer with the Valley Community Legal Foundation.

Recent studies conducted by UC Berkeley, UC Riverside and Columbia University found that people often become happier over time after they start volunteering.

Volunteering provides a unique way to become involved in serving our Valley and it can go a long way in helping you feel more connected to your legal community as well. Dr. Martin Luther King said, "Everybody can be great… because anybody can serve."

Consider joining the VCLF and give back to your community.

While our world has turned virtual, the Valley Community Legal Foundation has continued its mission to educate local high students on legal issues, provide educational scholarships to students pursuing law related studies, and to offer community grants to increase the access to justice for families in conflict and victims of domestic violence.



The VCLF will continue to sponsor a production of *DEFAMATION* for high school students. The play is a professional, theatrical courtroom drama focusing on race, religion, and class. Never has the discourse on these subjects been more compelling.

In 2021, the VCLF will be cooperating with local schools to craft a method for the presentation of the production, followed by a discussion.

We also sponsor *Constitution and Me*, a program developed by the VCLF to engaging students in conversations on constitutional questions. Based on a legal issue developed by the VCLF, over a three-week period, teams of bench officers and attorneys moderate sessions on constitutional questions in local high schools. Students identify issues and present arguments to a jury. Students who participate in the *Constitution and Me* program are offered the opportunity to participate in an essay contest to earn a scholarship to continue their education.

The VCLF provided such scholarships to seven students in 2020. With rising tuition costs and increasing costs for books at colleges and universities, these scholarships go a long way to defray the challenge faces to high school students as they continue their journey to college.

Although 2020 ushered in virtual meetings and social events and the public gatherings that have provided opportunities for our community partners to fundraise have been cancelled, the Foundation continues to work with our partners to provide grants to allow programs to continue.

One of our partners, Safe Passage, helps families break the cycle of domestic violence by providing housing, counseling, health care and self-defense classes to help those in need with what is needed to start a new, independent life—job and interview skills, helping construct a resume, computer training, transportation to appointments, and setting up interviews. Safe Passage's teen program, Time 2 Heal, helps children and teens learn skills to deal with anger, and stop bullying, harassment and abuse.

The Valley Community Legal Foundation offers many opportunities to 'virtually volunteer.'

So, if you have been feeling a little out of sorts lately, working with us to help our community can go a long way to serve as a positive way to help bring a sense of control in a stressful situation—a happy side effect of the vital work the VCLF does each year.

Whether you are looking to work on one project or dive right in and work on several, the VCLF is the place to start. Join us, and together we can build a better tomorrow for everyone in our Valley community.

CLASSIFIEDS

ATTORNEY-TO-ATTORNEY REFERRALS

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20 percent referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

SPACE AVAILABLE

ENCINO

Encino Office in Class A Bldg. Appx. 14'x16' office w/floor to ceiling windows & 180° view of Valley in shared 1,100 ft 10th Fl Suite w/room for asst. Call Richard (818) 788-8900.

SHERMAN OAKS SUBLEASE

Large executive office (22'x18') with views of hills (btw. Woodman and Hazeltine). $950/month. Secretary space available. Contact David (818) 907-9688.

SHERMAN OAKS

Single Office Space w/Secretarial Bay in Comerica Bldg. Professional suite with CPAs and Tax attorneys in the Sherman Oaks Galleria, 10th fl., 12 mo. lease. Amazing views. Relaxed atmosphere. First month & deposit due upon entry. Call (818) 995-1040.

WARNER CENTER SUBLEASE

Window office (17'x10') plus secretarial bay, full service suite, receptionist, voicemail, copy, conference room. Call (818) 999-9397.

WOODLAND HILLS SUBLET

Window Offices (apprx. 10'x14'), Class A Bldg, Ventura & DeSoto, unfurnished, secretarial bay avail, use of two conf rooms, copier/scanner. Call or Text (805) 953-6747.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience offering a family friendly approach to high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

SFVBA Inclusion & Diversity and Membership & Marketing Committees

DINNER AT MY PLACE

A member benefit to help members get to know each other in an intimate setting and spur referrals.

San Fernando Valley Bar Association
founded in 1926

PRESIDENT'S CIRCLE

WE RECOGNIZE THE FOLLOWING PRESIDENT'S CIRCLE MEMBERS FOR THEIR DEDICATION TO THE SFVBA AND THE COMMUNITY.

Alpert Barr & Grant APLC
Brot • Gross • Fishbein • LLP
Brutzkus Gubner Rozansky Seror Weber LLP
G&B Law, LLP
Kantor & Kantor LLP
Kraft Miles ALC
Law Offces of Gerald L. Marcus
Lewitt Hackman Shapiro Marshall & Harlan ALC
Neighborhood Legal Services of Los Angeles County
Nemecek & Cole
Oldman Cooley Sallus Birnberg & Coleman
Stone | Dean
The Reape-Rickett Law Firm

- **SFVBA membership for every firm attorney and paralegal**
- **Prominent listing in *Valley Lawyer* and firm logo on President's Circle page of SFVBA website**
- **Recognition and 5% discount on tables at Bar-wide events, including Judges' Night**
- **Invitations to President's Circle exclusive events with bench officers, community leaders and large firms**

Contact SFVBA Executive Director Rosie Soto Cohen at (818) 227-0497 or rosie@sfvba.org to sign up your firm today!

LEWITT | HACKMAN

SHAPIRO | MARSHALL | HARLAN

A LAW CORPORATION

CALIFORNIA'S TOP RANKED LAW FIRMS

BASED ON AV

AV® PREEMINENT™ Martindale-Hubbell Lawyer Ratings

16633 Ventura Boulevard, Eleventh Floor
Encino, California 91436

lewitthackman.com
818.990.2120