VALLEY LAWYER
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A Publication of the San Fernando Valley Bar Association

COVID-19 Vaccines in the Workplace: Mandate or Not

Earn MCLE Credit

California Judicial Council: What It Is, How It Works

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VALLEY LAWYER
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VALLEY LAWYER

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That Exciting Time of Year

DAVID G. JONES
SFVBA President

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AS WE APPROACH THE CORE summer months of the calendar, the time has once again here to scope out new talent to run in our annual San Fernando Valley Bar Association's Board of Trustee election.

I really enjoy this time of year when people step forward to become candidates for the Board. If elected, each of them will help shape the future of our Valley's legal community.

With as busy and stressful as lawyer's lives are, it takes a special person to step forward to run for election and volunteer their time to our nearly 100-year-old Bar.

Those who offer to become involved are typically selfless folk who want to make a difference and advance noteworthy goals for the Bar and their fellow attorneys.

As Thomas Jefferson once said, "We do not have government by the majority. We have government by the majority who participate."

So, in the spirit of one of our most laudable Founding Fathers, I am calling on lawyers to consider running for election to the SFVBA Board of Trustees.

Becoming involved may be easier in the more familiar setting of our legal community. While many of our members are a part of the growing number of lawyers involved in a variety of charitable causes and organizations, their involvement in helping shape one's own professional community is unique and, perhaps, more comfortable.

For others, the benefits of service are highly beneficial for their careers. Every candidate has the opportunity to be featured in a *Valley Lawyer* 'candidate profile' that immediately increases their profile and visibility in the Valley legal community.

The Bar also goes to great lengths to promote Board candidates online and on social media, so the opportunity to become more well known amongst your peers is right in front of you.

Candidates and Trustees also have the opportunity to make valuable connections with many of the most influential and talented lawyers in our community.

While there exists a debate among younger lawyers about the viability and utility of groups such as the SFVBA, they know and understand that their connections to the community and fellow lawyers are critical in their future success.

It is really not a close call to join and participate in the Bar. Any person who has ever advocated for something they believe in can grasp how meaningful such involvement can be.

The time commitment is limited, and, at some level, each trustee, given their constraints, contributes what they can.

Bar elections are really a springtime for our organization. They represent a renewal of our leadership and the changing of the guard, and I am genuinely excited for the folks who plan to run in our upcoming elections.

Our Board of Trustees consists of some of the most talented, successful, and engaged lawyers in Southern California. You should be next.

A Foundation to Build On

MICHAEL D. WHITE
SFVBA Communications Manager

michael@sfvba.org

IT IS PRETTY MUCH A GIVEN that anything—a building, a country, a company, an individual—built on a solid foundation will last and persevere.

The same holds true for an association of like-minded people that, though members may come and go and demographics morph over time, remains committed to its founding charter and consistently serves its members and its community with energy and vision.

When the San Fernando Valley Bar Association was founded in 1926, the 200-square mile Valley was home to only about 55,000 people.

Typically subdivided for small farms, most of its residents had been lured there over the preceding decades by promises of cheap land, and engaged in agriculture, grew everything from lettuce and oranges to wheat and olives.

But, as the Valley began to boom, access to legal services continued to be a matter of hit-and-miss with about 30 attorneys handling court cases, most of which had to be adjudicated at the Hall of Justice, 29 miles distant in downtown Los Angeles.

With six officers—including Oda Hunt Faulconer, a USC Law School grad and Bar First Vice President—at the helm, the Bar successfully lobbied for the construction of a courthouse in the Valley to house a branch of the Los Angeles Municipal Court.

Born in 1884 in Springfield, Illinois, Faulconer passed the Bar exam in 1913. She set up a private practice in Los Angeles and, six years later, was admitted to practice in all state and Federal Courts of California and the U.S. Supreme Court of United States.

She was named a Municipal Court judge in August 1931 and, among other activities, served as a Director of the Bank of Italy (now the Bank of America) in San Fernando, and as member of the

Oda Hunt Faulconer

State Bar Association; the American Bar Association; the Business and Professional Woman's Club; the Republican County Central Committee; and the Executive Committee of Republican State Central Committee.

Living in a home she had built on Mission Blvd. in San Fernando, Faulconer somehow found the time to own and manage a successful 35-acres citrus ranch in Valley.

She died in November 1943 and rests at the Forest Lawn Memorial Park in Glendale.

Successfully lobbying for a courthouse in the Valley was one of the initial steps taken by Faulconer and her fellow Bar visionaries in helping establish a physical presence of justice in the Valley that could meet the legal needs of its growing and increasingly diverse population.

Over the years, through war, civil unrest, depression, economic boom times, and, yes, even disco, the Bar has flourished in size and influence to its present position as one of the most highly regarded Bar associations in the state.

It has flourished, then and now, on a foundation laid by of Oda Hunt Faulconer, her far-seeing contemporaries, and their successors that serve as the Bar's officers, trustees, committee chairs and members, section heads, and President's Circle leaders.

CALENDAR

JUNE 2021

SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	ZOOM MEETING 3 Membership and Marketing Committee **6:00 PM**	4	5
6	7 VBN VALLEY BAR NETWORK ZOOM MEETING **5:30 PM**	WEBINAR 8 Probate and Estate Planning Section ***Behind the Scenes: A Conversation with Former LASC Probate Attorney Patricia Doyle*** **12:00 NOON** Attorneys Sarah Broomer and Patricia Doyle address the group and give us an inside look into the Probate Court. (1 MCLE Hour)	9	10	11	12
13	14 FLAG DAY	ZOOM MEETING 15 Board of Trustees **6:00 PM**	16	ZOOM MEETING 17 Inclusion and Diversity Committee Meeting **12:15 PM**	18 WEBINAR 25 Bankruptcy Law Section with the Jackson County (Oregon) Bar Association and the Central District Consumer Bankruptcy Attorney Association ***Sub-Chapter V Cases One Year In: A Look at the Practical Problems and How to Solve Them!*** **12:00 NOON** A panel of attorneys from around the country look at Sub-Chapter V cases in their districts, what works, unique issues, best practices and their judge's take on these cases. Approved for Bankruptcy Law Legal Specialization. (1.5 MCLE Hours) WEBINAR SFVBA, MCBA and SCV Bar Present ***Stretch Your Body and Relax Your Mind!*** **4:30 PM - 5:30 PM** Virtual Yoga Workshop with SFVBA Board Members Alan Eisner and Taylor Williams-Moniz.	19 JUNETEENTH FREEDOM DAY
20 HAPPY Father's Day	21 ZOOM MEETING Mock Trial Committee **6:00 PM**	22	WEBINAR 23 Family Law Section ***Meet the Judges*** **12:15 PM** Judge Robert Sanchez DuFour, Judge Gary Roberts, Judge Lee Arian and Commissioner Amir Aharonov headline the panel and discuss joining the Family Law Bench and what family law attorneys can expect in the coming months. (1 MCLE Hour)	24		26
27	28	29	30			

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

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.

Opportunities Abound

CHRISTOPHER P. WARNE
SFVBA President-Elect

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JUNE TRADITIONALLY MARKS the start of planning for the next SFVBA Board year. Now is the time for members to become involved as a Trustee, Committee Member or Leader, or Section Chair.

Every year, the SFVBA forms a formal Nomination Committee comprised of Trustees and active Bar members to select a slate of members desiring to be the next generation of Trustees and Executive Committee members.

The Nomination Committee is chaired by the current Past President. This year, more than half of the Board's seats are open for election.

Board of Trustee Candidates

All attorney members of the SFVBA who have been on the active roster for one year are eligible to apply for a nomination to become Trustees.

The applications are reviewed by the Nominating Committee. Selected candidates will stand for election later this summer. We strongly encourage all members to apply and help shape the future of our organization.

Non-attorney Associate SFVBA members are also encouraged to apply for the position of appointed Associate Trustee.

The Trustee application and details of the position's expected duties and responsibilities can be downloaded at https://sfvba.org/nominees-sought-for-sfvba-board/

Applications must be sent to the attention of SFVBA Executive Director Rosie Soto Cohen at rosie@sfvba.org by Tuesday, June 8, 2021, 5:00 P.M. (PST).

Committee and Section Leaders

In addition to Board seats, positions such as Committee and Section Chairs are also annually appointed every fall. These appointments are made by the SFVBA President and approved by the new Board.

The SFVBA has numerous committees such as the Inclusion and Diversity Committee, Bench Bar Committee, Programs Committee, and Membership and Marketing Committee. Each committee has an appointed Chair and active members.

> "Whatever your interests, the SFVBA has a place for you to become involved."

The SFVBA needs your help, involvement, and input. Whatever your interests, the SFVBA has a place for you to become involved.

Please contact the Bar staff for a full list of committees, both current and upcoming, for areas to get involved.

Section chairs help organize the amazing monthly MCLE programing and networking events.

Every substantive practice area has an appointed section chair, who would welcome not only input on content, but presentations by fellow members. Please contact the section chair of your respective legal practice area or the Bar staff for more information.

Opportunities abound for all SFVBA members. Please join us.

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 19.

By Karine Karadjian

COVID-19 Vaccines in the Workplace: Mandate or Not

As COVID-19 vaccines are becoming more widely available in California, questions are being posed by both employees and employers on whether employers can legally mandate the COVID-19 vaccine for their employees as a condition to remain employed.


DISCARD AFTER USE

AS COVID-19 VACCINES ARE BECOMING MORE widely available in California, questions are being posed by both employees and employers on whether employers can legally mandate the COVID-19 vaccine for their employees as a condition to remain employed.

There is no hard-line rule as of the time this article was written, but there is some guidance provided by the U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH), which answers certain commonly asked questions.

In December 2020, the EEOC issued guidance on COVID-19 vaccination mandates by employers as they relate to the Americans with Disabilities Act (ADA) of 1990 and Title VII of the Civil Rights Act.

In March 2021, the DFEH issued guidance on the same topic, replacing the two previous guidance documents it published in March 2020 and July 2020.

EEOC Guidance

EEOC's guidance discusses the applicability of federal anti-discrimination laws, mainly the ADA and Title VII, and how said anti-discrimination laws need to be taken into consideration if an employer chooses to mandate employees to receive the COVID-19 vaccine in order to remain employed.[1]

Per the EEOC, nothing in either the ADA or Title VII prevents employers from requiring employees to be immunized with the COVID-19 vaccine and provide proof of such as a condition for employment.

Under current EEOC guidelines, employers can enforce mandatory vaccines as long as there are certain limitations, such as exemptions for medical and religious reasons.

The employer will argue that it has a duty to keep its workplace free from recognized hazards under the general duty clause of the Occupational Safety and Health Act of 1970 (OSHA), which states that "each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."[2]

Medical exemptions to the vaccine are discussed as they relate to the ADA, which requires that reasonable accommodations be granted to an employee and prohibits discrimination on the basis of a disability or medical condition.[3]

The reasonable accommodation cannot, however, be unduly burdensome to the employer. Religious exemptions are discussed in the context of Title VII, which may require an employer to accommodate an employee's sincerely-held religious beliefs or practices.

Per EEOC guidance, the administration of a U.S. Food and Drug Administration (FDA) approved or authorized COVID-19 vaccine by an employer—or third party with whom employer contracts to administer a vaccine—to an employee is not considered a medical examination for purposes of the ADA.

However, if the employer administers the vaccine, it must take careful measures and ensure that the pre-screening questions it asks employees are job-related and consistent with business necessity, and do not elicit sensitive information about a disability.

If the vaccine is administered by a third party, a request by the employer for proof of vaccination is allowed and is not viewed as a disability related inquiry under the EEOC guidelines so long as the employer does not question why an employee has not received one.

Questions may be framed in a certain way if they are job-related and consistent with business necessity and proof of vaccination should be maintained in a separate confidential file.

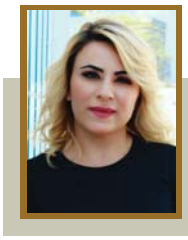
Per EEOC guidance, requiring employees to get the vaccine—whether the vaccine uses mRNA technology or not—does not violate Title II of the Genetic Information Nondiscrimination Act.

If an employer elects to mandate COVID-19 vaccinations and requests proof of vaccination from its workers, the employer can take disciplinary action against an employee who fails to provide proof of the vaccine for reasons other than a disability or sincerely-held religious belief.

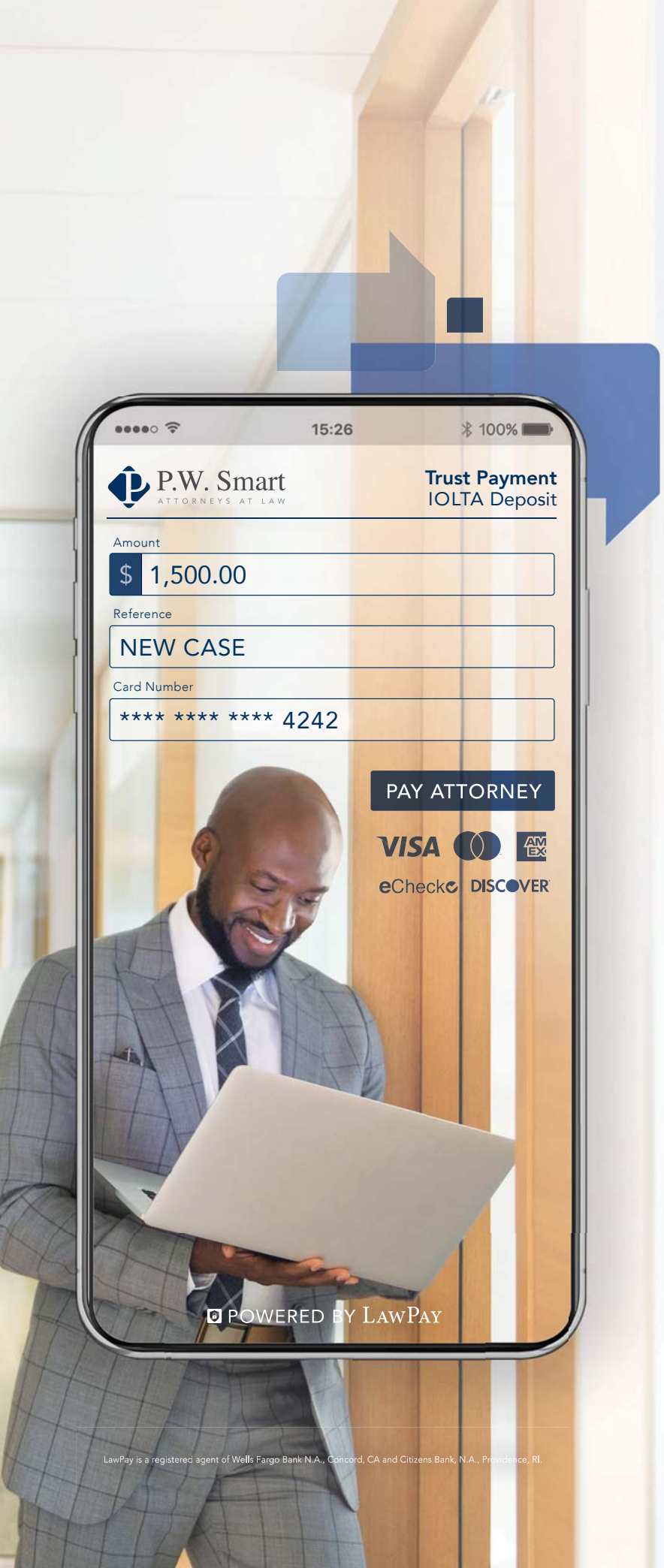
The EEOC's guidance seems to suggest that an employer can establish a mandatory vaccine policy if the need for it is job-related or if remaining unvaccinated would pose a direct threat to other employees, customers, or themselves.

What is the standard for determining whether an unvaccinated employee would pose a direct threat to others?

The EEOC guidance turns to an individualized assessment of the following four factors: the duration of the risk; the nature and the severity of the potential harm; the likelihood that the harm will occur; and, the imminence of the harm itself.



Karine Karadjian is an attorney, mediator, and mediation consultant focusing on plaintiff employment law, bankruptcy, and debt relief matters. She has offices in Los Angeles and Orange County and can be reached at karine@kelawfirm.com.



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The application of these factors is highly fact-specific. There is no blanket formula and employers are under a duty to apply the above test on a case-by-case basis.

Additionally, if the employer comes to the conclusion that a direct threat exists using the above factors, it also needs to establish definitively that an unvaccinated individual will expose others to the virus at the worksite.

If an employer determines that an individual who cannot be vaccinated due to disability posts a direct threat at the worksite, the employer cannot exclude the employee from the workplace unless there is no other way to provide a reasonable accommodation.

If a direct threat cannot be reduced to an acceptable level, the employer can prevent the employee from physically entering the workplace.

This does not mean, however, that the employer can automatically terminate the employee. There will need to be a determination and analysis on whether other federal, state or local-level rights apply, and whether an accommodation can be made for the employer to work remotely.

Similar guidelines come into place when an employee requests an accommodation and puts the employer on notice that a sincerely-held religious belief, practice, or observance prevents receiving the vaccination.

Title VII

Title VII of the Civil Rights Act prohibits discrimination by covered employers on the basis of race, color, religion, sex, or national origin.[4]

Its protection of religious beliefs comes into play in considerations mandating vaccines as the employer must provide a reasonable accommodation under Title VII, unless it would cause undue hardship to the employer.

EEOC guidance stresses that because the definition of religion is broad and protects beliefs/practices/observances with which the employer might not be familiar, the employer should generally assume that the employee's request for religious accommodation is based on a sincerely-held religious belief.

If an employer has an objective basis for questioning either the religious belief/practice/observance, the employer may request additional supporting information.

DFEH Guidance

The California DFEH issued an updated COVID-19 guidance in March 2021.

The updated guidance addresses whether employers in the state can require that their employees be vaccinated, and how to comply with the Fair Employment and Housing Act (FEHA) if the employer chooses to implement a mandatory vaccine plan.

For employers with five (5) or more workers, the FEHA prohibits employment discrimination and harassment on the basis of certain protected characteristics and also prohibits any retaliation when an employee is engaged in a protected activity.[5]

Essentially, the DFEH guidance suggests that employers may require the vaccine as a condition for employment as long as there is no violation of FEHA resulting from this requirement. The FEHA provides protections to employees and prevents employers from discriminating against employees based on certain protected characteristics.

Those certain protected characteristics for the purposes of COVID-19 vaccine requirements include disability and religion. Thus, if an employer implements mandatory vaccines, its mandatory vaccine policy must ensure that there is no discrimination against employees based on disability and religion.[6]

Similar to EEOC guidance, DFEH guidance stresses a requirement to reasonably accommodate employees seeking an exemption from the vaccine based on a disability or sincerely-held religious belief or practice.

If an employee seeks a medical or religious exemption, the employer is required to engage in an interactive process and reasonably accommodate the employee in

question, so long as the accommodation does not impose an undue hardship on the employer.

For example, should the employee be unable to perform essential duties even with reasonable accommodation, or if the worker is unable to perform essential duties without endangering the health or safety of the employee or others.

Reasonable accommodations may include having the employee work from home; having the employer implement safeguards at the worksite to enable the employee to work without endangering him/herself or others; and, in the religious context, eliminating the conflict between the religious belief or practice and the vaccine requirement, or a possible job restructuring/reassignment.

Employers who demonstrate undue hardship may be exempt from having to provide accommodations, but undue hardship is generally difficult to demonstrate, and employers who opt to deny reasonable accommodations to their employees should consult an attorney.

Per DFEH guidance, requesting proof of mandatory vaccination is not a disability-related inquiry, a medical examination, or a religious belief/practice-related inquiry and is thus allowed.

However, to the extent that proof of vaccination may include disability-related medical information, employers should make clear with employees that they should omit that information.

Additionally, similar to EEOC guidance, under DFEH guidance vaccination records/proof should be kept in a confidential file separate from the employee's general personnel file.

If an employee requests a reasonable accommodation due to a disability or sincerely held religious belief/practice, the employee is afforded protection against retaliation.

If the employer implements a mandatory vaccine program and an employee fails to comply absent a disability or sincerely-held religious belief/practice, the employer is not required to provide a reasonable accommodation and may take disciplinary action against those employees.

On General COVID-19 Inquiries

While the main focus of this article is whether employers can mandate COVID-19 vaccines for their employees, it may be helpful to address some general inquiries employers may come across with regard to COVID-19 precautions in the workplace.

For example, per DFEH guidance, employers are allowed to ask all employees entering the workplace if they have COVID-19 symptoms such as fever, chills, coughing, or a sore throat, and may send an employee home if the worker displays such symptoms or tests positive for the virus.

However, they must keep any confidential employee health information obtained in a medical file kept separate from the employee's personnel file.

Employers may also take a worker's temperature as long as it is for the limited purpose of evaluating the risk that the employee's presence poses to others in the workplace. Similarly, an employer may require employees to submit to a COVID-19 test so long as it is job-related and consistent with business necessity.

Guidance from the DFEH, the EEOC, and the Centers for Disease Control and Prevention suggest that a requirement for employees to submit to viral testing is generally accepted, while a requirement for antibody testing is not. All test results must be maintained as confidential medical records.

Employers may require employees to wear personal protective equipment designed to reduce the transmission of the COVID-19 virus.

However, if an employee needs a reasonable accommodation due to a disability, the employer needs to provide one unless doing so would create an undue hardship.

If an employer suspects that the employee was absent from work for a medical reason, the employer is allowed to ask for a cause for the absence. If an employee cites an illness or medical basis for the absence, that information must also be handled by the employer as a confidential medical record.

Critical Considerations

Employers considering a mandatory company-wide vaccine policy are advised to seek legal counsel prior to implementing said policy to make sure that they are in compliance with EEOC, DFEH and local guidelines.

Managers, supervisors, and HR will need to be properly briefed on the policies and pay special attention to following the proper guidelines for reasonable accommodations and engaging in an interactive process.

Adverse reactions from the employer-mandated vaccine may result in workers' compensation claims and will likely be covered under workers' compensation. Having employees sign waivers will likely be viewed as being unenforceable due to public policy.

Employers who choose to mandate vaccines should keep in mind that the requirement should be based on objective facts, tied to an employee's job duties, and consistently administered.

There should also be a clear explanation of how to seek a medical or religious exemption as an accommodation. The exemption requests should be thorough and assessed on an individual basis. All medical information collected in the process, including proof of vaccination, should be kept in the employee's separate confidential medical file.

Additionally, employers should take into consideration the consequences of mandatory vaccination programs and what impact they will have on employee morale and weigh the risks against the benefits.

Some employers may elect a policy of strongly encouraging as opposed to mandating the vaccine. In such cases, incentives such as offering paid time off from work to recover post-vaccine may also prove helpful.

The EEOC and DFEH guidance is merely that, guidance, as the issues related to COVID-19 vaccines and procedures are constantly evolving.

Because the vaccine has only been available for a few months as of the writing of this article, many of the issues outlined in the guidance and the article are novel and will take some time to play out.

This article lays out a general summary of guidance issued by the EEOC and the DFEH. Employers who wish to implement a mandatory vaccine program are strongly encouraged to seek legal counsel for proper guidance.

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[1] EEOC.gov "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws" December 2020.
[2] 29 U.S.C. §654 Sec. 5(a)(1).
[3] 42 U.S.C. §12101.
[4] 42 U.S.C. §2000e-2.
[5] California Government Code §12940.
[6] DFEH.ca.gov "DFEH Employment Information on COVID-19" March 2021.

COVID-19 Vaccines in the Workplace: Mandate or Not
Test No. 152

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. DFEH issued its latest COVID-19 vaccine guidance in the workplace in July 2020.
❑ True ❑ False

2. EEOC issued guidance discussing COVID-19 guidance for employers in December 2020.
❑ True ❑ False

3. Under OSHA's general duty clause, an employer is required to provide a place of employment that is free from recognized hazards.
❑ True ❑ False

4. According to EEOC guidance, vaccine exemption accommodations due to religious beliefs are protected under the ADA.
❑ True ❑ False

5. Per EEOC guidance, an employer's request for proof of vaccination from an employee is allowed.
❑ True ❑ False

6. Under DFEH guidance, employers are allowed to ask all employees entering the workplace if they have COVID-19 symptoms.
❑ True ❑ False

7. The ADA provides protection for employees seeking a vaccine exemption on the basis of a disability.
❑ True ❑ False

8. DFEH guidance and the Fair Employment and Housing Act are California specific.
❑ True ❑ False

9. Both EEOC and DFEH guidance discuss an accommodation for an employee based on sincerely- held religious beliefs.
❑ True ❑ False

10. Per EEOC guidance, the administration of a FDA approved or authorized COVID-19 vaccine by an employer to an employee is considered a medical examination for purposes of ADA.
❑ True ❑ False

11. The EEOC enumerates a four factor test in determining a standard for whether an unvaccinated employee would pose a direct threat to others.
❑ True ❑ False

12. Title VII of the Civil Rights Act prohibits discrimination by covered employers on the basis of race, color, religion, sex, or national origin.
❑ True ❑ False

13. Medical information such as proof of vaccination can be placed in an employee's personnel file and does not need to be separated as a confidential medical record.
❑ True ❑ False

14. Per DFEH guidance, is an employee needs a reasonable accommodation from wearing personal protective equipment due to a disability, the employer does not need to provide it.
❑ True ❑ False

15. Adverse reactions resulting from a mandatory vaccine policy in the workplace may result in a workers compensation claim by the employee.
❑ True ❑ False

16. Medical and religious vaccine exemption requests are highly fact specific and should be assessed on an individual basis.
❑ True ❑ False

17. According to DFEH guidance, employers may not, under any circumstance, check an employee's temperature.
❑ True ❑ False

18. Per DFEH guidance, employers may require employees to wear personal protective equipment designed to reduce the transmission of COVID-19.
❑ True ❑ False

19. EEOC guidance states that the employer should generally assume that the employee's request for religious accommodation is based on a sincerely-held religious belief.
❑ True ❑ False

20. FEHA applies to employers with 5 or more employees.
❑ True ❑ False

COVID-19 Vaccines in the Workplace: Mandate or Not

MCLE Answer Sheet No. 152

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

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❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for
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Credit Card Number

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CVV code Exp. Date

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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
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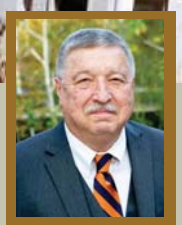
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

By Michael D. White

California Judicial Council: What It Is, How It Works

Formed in 1926 by an amendment to the state constitution, the Judicial Council of California serves as the policymaking body for California's state court system — the largest court operation in the entire nation.



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 40 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.


CALIFORNIA REPUBLIC
PARK

FORMED IN 1926 BY AN amendment to the state constitution, the Judicial Council of California serves as the policymaking body for California's state court system.

Serving a population of more than 39.5 million people, or about 12 percent of the total U.S. population, the Council oversees the operations of the largest court operation in the entire nation—those of the state's Supreme, Appeals and Superior Courts.

Currently, according to the Council's *2020 Court Statistics Report*, some 1,750 judges sit on the bench in 500 court buildings sited throughout the state.

By far and away, the state's Superior Courts handle the vast bulk of the state's judicial caseload.

Those courts—one in each of the state's 58 counties—alone handled more than 5.9 million civil, criminal, family, juvenile, probate, mental health, and habeas cases in FY2018-2019, the report said.

On June 2, 1998, California voters approved a constitutional amendment permitting the judges in each county to unify their superior and municipal courts into a single superior court with jurisdiction over all case types.

The goal of court unification is to improve services to the public by consolidating court resources, offering greater flexibility in case assignments, and saving taxpayer dollars.

By February 2001, judges in all 58 counties had voted to unify their trial courts.

Membership, Qualifications

The superior courts have 1,754 authorized judges and hundreds (in terms of full-time equivalents) of authorized commissioners and referees.

The California Legislature determines the number of judges in each court. Superior court judges serve six-year terms and are elected by county voters on a nonpartisan ballot at a general election. Vacancies are filled through appointment by the Governor.

Function

The California Constitution directs the San Francisco-based Judicial Council (CJC) to provide policy guidelines to the courts, make recommendations annually to the Governor and Legislature, and adopt and revise California Rules of Court in the areas of court administration, practice, and procedure.

"The Judicial Council has many tasks and primarily, and overall, is responsible for the fair administration of justice in the state of California," says California Supreme Court Chief Justice Tani G. Cantil-Sakauye. In addition to her role on the Supreme Court, she also heads the Council itself.

"We have the largest judiciary in the United States and therefore have a number of issues and instructions and advisory committees that propose changes in our rules to create best practices in our courts. We grapple with things like our statewide budget, with new legislation, supporting legislation, and initiating legislation that impacts the fairness of the branch."

The Council, she says, "also does many things regarding trial courts and what litigants need there. We have a very strong education policy for judges and work to meet the needs of people who don't have a lawyer when they come to court. All of it is aimed at access, diversity and fairness in the judicial branch."

Another key CJC function is securing public monies to fund the day-to-day operations of the state's court system.

Martin Hoshino serves as Administrative Director of the California Judicial Council.

Accountable to the Judicial Council and to the Chief Justice for the performance of Council staff, he is charged with accomplishing the Council's goals and priorities.

The Council exists, says Hoshino, "to create some uniformity and consistency among California's diverse communities. The voters and residents of the state have expectations as to how the administration of justice will be applied. The Council exists to create some of that consistency. One of the Council's most important functions, in addition to policy and rule making is securing resources and public money for the operation of the state's courts," he says.

The monies are allocated and distributed to the courts "in a way that equalizes the access to justice in the state's communities and meets the public's expectation that there is equality both in terms of the law and its principles, and their ability to access the justice system."

Hoshino heads a staff of approximately 800 people responsible for implementing Council policies, supporting its day-to-day operations, and maintaining the California Court Technology Center—the court system's secure, centralized datacenter, operated under contract by Newark, California-based Siemens IT Solutions and Services.

Make-Up

The Judicial Council—based in San Francisco with a branch office in Sacramento—is composed of 21 voting members: the Chief Justice of the California Supreme Court; 14 judicial officers appointed by the Chief Justice—one associate justice of the Supreme Court, three justices of the Courts of Appeal, and ten trial court judges); four attorney members appointed by the State Bar Board of Trustees; and one member each from the State Assembly and the State Senate.

The state constitution requires that the Council also have two non-voting members who are court

administrators. The Administrative Director is a non-voting member who serves as Secretary, and the Chief Justice can also appoint further advisory (non-voting) members.

New judicial members of the Council and its committees, the majority of whom are publicly elected justices and judges, are selected through a nominating procedure intended to attract applicants from throughout the legal system and to result in a membership that is diverse in experience, gender, ethnic background, and geography.

CJC members do not represent any particular constituency but act in the best interests of the statewide judicial system and the public.

The Council also has approximately ten advisory members who include court executives or administrators, the chair of the Council's Trial Court Presiding Judges Advisory Committee, and the president of the California Judges Association.

Staggered terms, with roughly one-third of the Council's membership changing each year, "ensure continuity while creating opportunities for new participation and input."

The Council carries out much of its work through a number of internal committees, advisory committees, and task forces, with about one-third of the judicial branch's judges and justices participating as members. Every superior and appellate court in the state is represented on at least one advisory body.

While the majority of committee members are justices, judges, and court personnel, the advisory bodies include a broad range of members to ensure the Council hears from many voices from within and outside of the judicial system.

Other members include attorneys, interpreters, child advocates, educators, probation officers, business executives, and representatives from tribal courts, law enforcement, legal services, public libraries, and other judicial branch stakeholders.

The Judicial Council's staff serves the courts, justice partners, and the public, improving access to justice with a variety of programs and services.

In addition to directly supporting the Council's advisory bodies, Council staff provide services to the courts in the areas of budgeting, accounting, human resources, education, court construction, real estate management, security consulting, information technology, research, communications, criminal justice, family and juvenile law, and more.

Addressing Special Needs

• COVID-19: When the pandemic struck in full force in March 2020, the Council sprang into gear and began closely monitoring the pandemic's evolving impact on the operations of the state's entire judicial system.

"Because our 58 trial courts and six appellate districts face different impacts from the latest COVID-19 surge, and have different capacities and resources, statewide orders for case processing, at this time, are inappropriate and would impair the flexibility trial and appellate courts need to respond to local conditions and access to justice," wrote Chief Justice Cantil-Sakauye last December.

The state's courts, she said at the time, "should assess their circumstances and ability to operate under their local constraints.

Courts may still make requests for emergency orders based on local conditions, the ability to hold remote hearings and provide social distancing while harmonizing directives from local health officers and local government officials, as well as clarity for local emergency rules of court."

Through orders issued by Chief Justice Cantil-Sakauye, and emergency Rules of Court approved by the Judicial Council, the judicial branch immediately and proactively gave courts the "emergency tools" to confront the impact of the pandemic—tools built around the guidelines provided by the Department of Public Health, and the federal Centers for Disease Control and Prevention to limit the spread of the virus.

The state's Superior Courts were thus authorized "to adopt any proposed rules or rule amendment intended to address the impact of the COVID-19 pandemic to take effect immediately,

without advance circulation for public comment.”

Over the following 15 months, the Council has issued a flurry of Emergency Rules to be implemented throughout the state’s court network in a critical effort to retain public access to the justice system and, at the same time, adhere to a regimen that would protect court staff and the public from the spread of the COVID-19 virus.

The Rules covered a host of emergency operational issues, including the suspension of judicial foreclosures and evictions, the renewal of restraining orders, the suspension of jury trials, extensions of the preliminary hearing and arraignment times, prioritizing critical juvenile court hearings, and the electronic service of documents in most civil cases.

Perhaps the most dramatic changes occurred in the implementation of new technologies and how they impacted the actual manner in which trials have been conducted during the pandemic.

Among the most significant impact was seen in the capability of parties to use technology to appear remotely for a deposition, criminal defendants to appear through counsel or remotely via technology “in all pretrial criminal hearings,” and courts being given the option of requiring “hearings and court operations to be conducted remotely via the use of technology, with the consent of the defendant in criminal cases.”

• Court Translation: California is home to one of the most diverse populations in the world, with more than 200 languages and dialects spoken by the people who live there.

Currently, some 44 percent of the state’s residents speak a non-English language at home, while almost one-fifth of the state’s population—approximately 7 million people—have limited English-language skills.

“When I became Chief Justice in 2011, I became aware that there were some concerns about people’s ability to understand clearly and meaningfully the language that was spoken in the courts,” says Chief Justice Cantil-Sakauye.

The result was the creation of a task force “to study language access in the state’s judicial system. They worked on signage and improving interpreter services, and have worked on providing video court reporters and providing video interpreters in rural areas or wherever there is a need.”

Currently, about 91 percent of court interpretation services in courtroom proceedings is in Spanish, while American Sign Language, Arabic, Eastern Armenian, Western Armenian, Cantonese, Farsi, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Tagalog, and Vietnamese have also been certified for translation in California’s courts.

Recently, in response to the increased use of remote proceedings resulting from the COVID-19 pandemic, the Council approved updated guidelines for spoken language interpreting in video remote proceedings. The revised guidelines support both physical and virtual courtrooms to ensure access to justice and the health and safety of court users, court staff, and judicial officers.

In addition, it approved a “one-time allocation methodology” for FY 2021-22 to help trial courts plan pending the final FY 2021-22 budget allocations for translation services.

• Clearing a Logjam: One of the many negative impacts of the COVID-19 pandemic on the state’s court system has been a significant backlog of criminal cases in which the defendant has been arraigned, but there had been minimal progress toward case resolution either through plea or trial.

“This burden of the pandemic-induced criminal trial backlog falls on all justice system partners, victims, and defendants,” said Chief Justice Cantil-Sakauye.

“Prosecutors may have witnesses who become unavailable over time or find that evidence in the case has become stale. Defendants and their counsel must continue to develop the defense case, with counsel having only limited access to in-custody defendants. Defendants who are out of custody are often severely hampered in their ability to steady their lives—through employment, obtaining a driver’s license, moving to lower cost housing, etc.—due to the lack of resolution of their criminal cases. Victims are without timely resolution and restitution.”

The courts, prosecutors, and defense counsel “will face a substantial number of cases as we emerge from regional stay-at-home orders and the COVID-19 pandemic

unless the justice community makes a concerted effort to take action now."

And take action the CJC did, moving to support trial courts establishing "readiness conferences" for the early disposition of criminal cases by making retired judges available through a "streamlined" Temporary Assigned Judges Program (TAJP).

The move proved highly effective in "providing courts with critically needed judicial assignments in a timely manner" and expanding the pool of assigned judges available to the courts.

"I encourage courts to work with their justice system partners to create readiness conference programs that are as expansive as possible, given the need in their jurisdiction during the pandemic," said the Chief Justice.

"Going forward, any court that requests an emergency order that includes an extension of time for holding criminal trials will be required to state if they have established a program and include a description of it," she added.

"I anticipate ending this temporary program when California's state of emergency is lifted, but I may elect to end it sooner if the pandemic-related need abates."

Recent Actions

At its May 2021 meeting, CJC Administrative Director Hoshino provided an overview of Governor Newsom's proposed FY 2021–22 state budget.

The proposed budget for the judicial branch includes money to restore $200 million previously cut from the judicial branch budget, address pandemic-related case backlogs, increase legal aid, expand pretrial services, build new courthouses and maintain existing facilities, and forgive fines and fees for low-income people.

The Council also approved a menu of new data and information policy concepts aimed "at improving how the judicial branch uses data and information to guide decisions on expanding and improving court operations and services."

The past year, the CJC found, "has accelerated the ongoing need for data due to the pandemic's effects on court operations and services, such as the number of courts holding remote proceedings and in which case types; the number of litigants accessing self-help centers, both in-person and remotely; and the number of filings and dispositions.

In March, the Chief Justice named a Council workgroup "to examine court practices adopted during the pandemic and recommend those that demonstrate the most promise."

Over the past several months, the group—the Information Technology Advisory Committee—has focused on making recommendations as to how the state's courts can adapt to new technologies to better operate in the rapidly evolving world of virtual justice.

The CJC is reportedly zeroing in on workable proposals in the areas of information security, the use of vendors to store electronic evidence filed with the courts, video hearings and electronic evidence offered during video hearings, admissibility standards for digital evidence, and online dispute resolution processes.

Most recently, the Council proposed a new court rule that specifically addresses "lodged electronic exhibits," which are reportedly described as "an exhibit in electronic format that is not filed, but rather is electronically transmitted to or received by the court for temporary storage pending use at a trial or other evidentiary hearing."

An electronic exhibit is described as "something which exists only in electronic format— e.g., an email message or a deposition transcript— or an electronic copy of a tangible object such as a map. The proposed rule does not cover physical electronic storage devices."

If approved after a period of public comment, the new rule would be 'on-the-books' as Rule 2.901 of the California Rules of Court.

By Mark J. Phillips and Aryn Z. Phillips

The "Fatty" Arbuckle Case:

Hollywood's First Celebrity Trial

THE FRENCH CALLED IT THE CRAZY YEARS FOR the extraordinary social, economic and artistic changes that occurred. The British called it The Golden Age Twenties for its years of economic boom. In America, it was the Roaring Twenties.

By any name, it was the decade in which the 20th Century came of age.

The Twenties brought peace and prosperity to most, and a sense of social evolution. Charles Lindbergh piloted the *Spirit of St. Louis* from New York to Paris. Baseball was America's pastime and Babe Ruth its unquestioned king. Prohibition in 1920 did little to slow the party atmosphere of jazz, flappers and excess, that roared unabated until the stock market crash of October 1929.

And, despite the highs and lows, through it all, America went to the movies.

A Sad Anniversary

This year marks one hundred years since the first of the great Hollywood trials, that of Roscoe "Fatty" Arbuckle, and the start of America's fascination with crime that has not abated since.

In 1921, Arbuckle was the highest paid film star in Hollywood. King of the two-reel comedies, he was beloved by millions for his pratfalls, his pie fights and his innocent, angelic smile. Studios churned his movies out by the score, and ticket buyers across the country stood in line to watch them.

But all that came to a tragic end on September 5, 1921.

Coming off a punishing year-long schedule of back-to-back filming, Arbuckle and several friends drove to San Francisco for a spell of rest and relaxation over the Labor Day weekend. Prohibition was in full swing, but liquor was available to those who could afford it, and Arbuckle certainly could.

That weekend, after a drunken revel in his suite at the St. Francis Hotel, Arbuckle was wrongfully charged in the rape and death of 26-year old actress Virginia Rappe.

Rumors, none of which were true, swirled of his sexual deviation and he was caught in a firestorm of ambitious politicians, rapacious studio owners, social reformers and newspaper publishers. Arbuckle was tried in both the press and the courts, which, after three trials, acquitted him of any wrongdoing.

But the damage was done. Blacklisted and financially ruined, he was one of the most reviled men in America.

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Rise and Fall

Just thirty-four, his rise and fall in the world had been dizzying from every perspective.

Born March 24, 1887, Arbuckle was one of five children born into a poor farming family in Smith Center, Kansas. His father, William, presumed him to be the product of his wife's infidelity and, in revenge and derision, named him Roscoe Conkling Arbuckle, after the notorious U.S. senator and womanizer from New York.

Arbuckle's movie success was neither chance nor favor, but rather the result of talent and many years of hard work.

On his own since age 12, even then 185 pounds, Arbuckle was a skilled performer, capable of physically-demanding slapstick humor, dancing and pratfalls. His charm won over audiences around the world and he spent his early years headlining Alexander Pantages' national touring group.

Picnicking one afternoon in El Paso, Texas, the troupe found themselves surrounded by soldiers led by Mexican revolutionary Pancho Villa. Arbuckle and Villa introduced themselves, and, in a moment of sublime historical mischance, began throwing fruit pies at each other in fun.

When Arbuckle later introduced the now iconic pie fight in early films, the gag became a mainstay for him, as well as scores of other film comedians who adopted and perfected the routine.

He ultimately found stardom with Keystone Studios, the seminal early movie studio in Los Angeles founded by film producer and comic genius Mack Sennett, whose Keystone Kops—anchored at one end by Arbuckle's sizable girth—have entered the American lexicon as any group that mismanages its affairs despite a zany excess of energy and activity.

In fact, so recognizable were the disaster-prone Kops with their tall, British-style police helmets, that many police departments throughout the United States quickly abandoned the headgear in favor of the eight-point officers' caps worn by officers today.

Tipping the scales at more than 300 pounds, wherever he went, he was known as Fatty and that nickname appeared everywhere in newspaper and magazine articles, on movie posters and in product promotions. But it was only a screen name, and Arbuckle never used it himself, nor did his friends use it in conversation with him. When anyone addressed him as Fatty in public, he politely responded, "I have a name, you know."

By the summer of 1921, Arbuckle was at the height of his success and popularity, as Paramount had signed him to an unprecedented three-year, $3 million contract that made him the highest paid movie actor of his day. He employed a butler and a chauffeur, entertained often, spent freely, and saved nothing.

He kept six cars, including a Rolls Royce and a custom-built Pierce-Arrow touring car four times the size of an average car. "Of course, my car is four times the size of anyone else's," Arbuckle told interviewers. "I am four times as big as the average guy!" At $25,000, the car cost one hundred times the average American's annual salary.

These excesses of Hollywood stirred the passions of the national press and caught the attention of politicians.

Newspapers, particularly the Hearst dailies, ran editorials critical of movie actors, and calls came from many directions for the industry to police itself. It was in this charged environment that Arbuckle announced an "open" party in San Francisco, loaded his Pierce-Arrow with supplies, and headed north from Los Angeles.

Monday, September 5, was the national holiday, and Arbuckle's suite at the St. Francis Hotel began to fill with guests. Amongst them was a curious pair—Maude Delmont and Virginia Rappe, the former a petty criminal and the latter a twenty-five-year-old bit actress with a reputation as a likely prostitute.

Arbuckle had never met either of them except in passing and there is some dispute about what they were doing in San Francisco that weekend.

By midmorning, the party in Arbuckle's suite was in full swing. There was food, bootleg liquor, music and dancing, and a stream of guests coming and going. Rappe became extremely drunk, then inexplicably erupted into hysterics and ran through the suite ripping at her clothes.

Startled witnesses believed she had been accidentally kneed in the abdomen by Arbuckle while dancing. When Arbuckle later attempted to use the bathroom in his room, he found Rappe vomiting into the toilet. She was crying with pain, and he carried her to his bedroom to lie down.

When Delmont entered the room, she found Rappe on the bed, disheveled and screaming, with Roscoe leaning over her. The clamor brought other guests, and Delmont ordered the bathtub filled with cold water to cool Rappe's fever.

> "When Arbuckle later introduced the now iconic pie fight in early films, the gag became a mainstay for him, as well as scores of other film comedians."

Arbuckle located a vacant room down the hall and took her there to lie down, Delmont following to keep an eye on her.

He phoned the hotel manager and asked for the physician on call, who opined that she was simply suffering from too much to drink. The party continued without Delmont or Rappe for the rest of the afternoon in high spirits, and with no other incidents.

The next day, Tuesday, September 6, Rappe was no better. Delmont summoned another doctor, Melville Rumwell, a physician associated with the local Wakefield sanitarium. This was an unusual selection, but perhaps telling as Dr. Rumwell was a specialist in maternity, and Wakefield an institution with a reputation for performing abortions.

That afternoon, Arbuckle checked out of the St. Francis, picking up everyone's tab for the weekend. He boarded the coastal passenger liner *Harvard* for the trip south to Los Angeles, and on Wednesday, September 7, he returned to work.

Back in San Francisco, Rappe's condition continued to deteriorate. She was moved to the Wakefield Sanitarium on Thursday afternoon. By then, delirious with a high fever, she died of peritonitis and a ruptured bladder in the early afternoon of Friday, September 9.

After Rappe's death, Maude Delmont contacted the San Francisco Police Department and swore out a complaint against Arbuckle, alleging that he had dragged Rappe in his bedroom and raped her, either personally or with a Coca-Cola bottle, and that her death was the result of that assault.

Arbuckle did not even know that Rappe had died until two San Francisco police officers knocked on his door and summoned him back to San Francisco for questioning.

Early Saturday morning, Arbuckle returned to San Francisco with an attorney, Frank Dominguez, and reported to the Hall of Justice, where he was questioned for three hours.

Dominguez believed the matter of Rappe's death would be dispensed with easily and in due course, but was concerned about the consequences of Arbuckle's possession of bootleg liquor. He advised Arbuckle to remain silent.

His concerns were seriously misplaced and at about midnight that night, Saturday, September 10, Arbuckle was arrested and charged with first-degree murder. He spent the next 18 days in jail until bail was granted on September 28.

Colliding Forces

That Arbuckle came to find himself in this fight for his life was the result of several colliding forces.

First, Delmont's inexplicable fabrication of the assault on Rappe, given in the form of a sworn affidavit, could not be easily explained away or ignored by the authorities.

Second, the new district attorney in San Francisco, 46-year-old Matthew Brady—a politically connected and ambitious lawyer in his second year as prosecutor who saw the prosecution of Arbuckle as a steppingstone to higher office.

Finally, and importantly, the immediate focus of both the local and national newspapers owned by William Randolph Hearst was overwhelmingly and uniformly biased against Arbuckle.

The coverage was all-pervasive. Beginning Monday, September 12, the Hearst papers ran sensational front-page headlines every day, including "*Fatty Faces Coroner's Jury,*" *"Orgy Girl Offered Bribe to Keep Mum"* and *"Movieland Liquor Probe Started – 40 Quarts Killed At Fatty's Big Party."*

So did papers all over the United States. The coverage in The New York Tribune, founded in 1841 by abolitionist Horace Greeley, was nearly continuous, but, while some reporting was

relatively balanced, this was the age of yellow journalism and much of the content pilloried Arbuckle.

Trial One

Trial commenced before Superior Court judge Harold Louderback on Monday, November 14. Arbuckle was now represented by attorney Gavin McNab, well known for representing Hollywood celebrities, and a team of four other respected attorneys. After five days of questioning, a jury of seven men and five women was empanelled.

Prosecutor Matthew Brady was working with weakening evidence and recalcitrant witnesses. Those present at the Labor Day party had been interviewed by the police immediately after Rappe's death and had initially backed Delmont's story, but several had recanted and refused to sign statements. Brady responded by threatening them with perjury and confining them in protective custody to prevent the defense from conducting interviews.

Brady's most difficult challenge, however, was Maude Delmont, on whose claims the charges were largely based. Of uncertain age, her photo reveals her to be a woman of middle age with a dour expression. Using a string of aliases, she had an extensive police record, with at least fifty charges ranging from bigamy to extortion filed against her.

Not only was she a lifelong criminal, she had changed her story so many times that by the time trial commenced, both sides seriously doubted her credibility.

To guarantee her testimony at the earlier inquest would not be contradicted at trial, Brady had her jailed on bigamy charges and refused to release her to testify. Defense requests to call her to the stand were turned down by the court.

Prosecution witnesses included guests at the party, a studio security guard who testified to Arbuckle's having met Rappe in 1919, a hotel chambermaid who testified to the rowdy nature of the celebration, and a criminologist who testified that Arbuckle's fingerprints on the inside of his bedroom door obscured those of Rappe, suggesting that Rappe had struggled to open the door and that Arbuckle had forced it closed.

Defense experts were called to demonstrate that Rappe's death could have been the result of disease. Other witnesses included those who testified that they had witnessed Rappe on prior occasions drink to excess and run about tearing at her clothes, even running naked in the streets.

Arbuckle was the final witness in his defense. His testimony was described as calm, lasting four hours. He recounted the events of the party and how he found Rappe on the floor of his bathroom in front of the toilet, carried her into his room and put her on the bed. He described her distress, the screaming and the tearing at her garments.

On cross-examination, the prosecutor retraced Arbuckle's testimony but was unable to find any weaknesses in his defense. It was clear that if a crime had been

committed, no one had seen it and there was no physical evidence that pointed to Arbuckle.

Maude Delmont, with her black past and her shifting story, was never called as a witness.

Both sides made closing arguments, the defense portraying Arbuckle as a kind man who had sweetened the lives of millions of little children, now needlessly suffering when no crime had been committed, and the prosecution calling him a moral leper with whom no woman in America was safe.

The jury retired for deliberation. After forty-one hours, they returned on December 4, unable to render a verdict, having reached a 10-2 vote for acquittal.

Trial Two

A second trial commenced on January 11, 1922, before a new jury, again with Brady for the prosecution and McNab for the defense.

Many of the same witnesses testified, and buoyed by his near success in the first trial, McNab chose not to have Arbuckle testify, focusing instead on a parade of witnesses who trashed Rappe's reputation.

The strategy backfired, with nearly disastrous results. After two days of deliberation, the jury returned deadlocked again, but this time voting 10-2 for conviction.

Trial Three

The third and final trial commenced on March 6, 1922. After the near scare of the second jury, McNab left no stone unturned, carefully detailing both Rappe's sordid past and calling Arbuckle to the stand to testify in his own defense.

After five weeks and only six witnesses called by an exhausted prosecution, the jury retired to deliberate on April 12. It returned in less than five minutes.

Not only did it vote unanimously for an acquittal, it took the few minutes behind closed doors to craft a written apology to Arbuckle, which it handed to the court. The jurors wrote:

> *"Acquittal is not enough for Roscoe Arbuckle. We feel that a great injustice has been done him…We wish him success, and hope that the American people will take the judgment of fourteen men and women who have sat listening for thirty-one days to evidence, that Roscoe Arbuckle is entirely innocent and free from all blame."*

But the verdict of a single San Francisco jury, even one motivated to the extraordinary gesture of penning a written apology to the defendant, was not enough to save Arbuckle's career.

Within a week of the death of Virginia Rappe, exhibitors in every city in America had withdrawn Arbuckle's films, and those that had been completed and ready for distribution were never released. His record-setting, three-year $3,000,000 contract was canceled, and without the ability to work and his reputation in tatters, Arbuckle was ruined.

Fueled by frenzied newspaper coverage, the groundswell of negative publicity continued to build. Amid a Hollywood lifestyle, considered by most Americans to be out of control, Arbuckle was only the most visible example.

Over the next several years, other scandals set the newspaper presses running, including the still-unsolved murder of Paramount director William Desmond Taylor and the 1923 death of silent film heartthrob and morphine addict Wallace Reid.

Those scandals, along with the Arbuckle trials, led to the creation of the Motion Picture Producers and Distributors of America, known as the Hays Office, under the dictatorial sway of former U. S. Postmaster General, Will Hays.

Just as major league baseball hired Judge Kennesaw Mountain Landis as Commissioner in 1921 following the infamous 1919 Black Sox Scandal, so the Hays Office was created to deal with a trail of broken lives and disgrace that threatened the burgeoning film industry, and the public backlash that ensued.

Formed in January of 1922, one of Hays' first moves was to blacklist Arbuckle, prohibiting him from working in films.

Three years later, Arbuckle's wife, the silent film star Minta Durfee, from whom he had been separated nine years, divorced him. He married twice more, in 1925 to actress Doris Deane, who he met for the first time on the fateful 1921 passenger liner trip home from San Francisco, and again in 1932 to a young actress, Addie McPhail.

After a high-spirited dinner in Manhattan on June 29, 1933, to celebrate a just-received offer to appear in a feature-length Warner Bros. film, the couple returned to their Central Park Hotel and went to bed. That night, Arbuckle died in his sleep. He was forty-six.

Largely Forgotten

A century of innovation, from silent to sound, short to feature-length, black and white to color, faltering nitrate to sophisticated computer graphics, has relegated Arbuckle and his contributions to the industry to the back of the bottom drawer of cinema history.

Film scholars and critics may know him, but his films—those that still exist—are now largely unwatched as America has all but completely forgotten its once darling Fatty Arbuckle.

Few Americans today even recognize his name, and those who do only vaguely remember an alleged rape and rumored Coke bottle—the legacy, obituary really, written for Arbuckle in the newspapers in the fall of 1921 when he was still a household name.

Few have fallen so far, so fast.

The one who profited most from that fall, was, perhaps, William Randolph Hearst, who boasted later that the Arbuckle's trial and his fall from grace had served its purpose by selling more of his newspapers than the sinking of the *Lusitania*.

Valley Lawyer

BAR NOTES

NEW MERGER: The law firms of Shenon Law and Alpert, Barr & Grant have merged.

The new firm will move forward under the name of Alpert, Barr & Grant, with Gary Barr, Adam Grant and Natela Shenon leading the combined practice as equity shareholders.

The new firm is located at 15165 Ventura Blvd, Ste. 200, in Sherman Oaks.

ONLINE BAR TESTING: A new committee—the Joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Exam—has been tasked with considering changes to the California bar exam and making recommendations in 2022.

One of the changes to be studied by the new committee is whether all or part of the two-day California bar exam should be administered online.

The commission will also look into the state's experience with a temporary provisional licensure program and will consider the National Conference of Bar Examiners' recent recommendation "to refocus bar exams on problem solving and real-world practice."

MALPRACTICE CLAIMS: Legal malpractice claim payouts were the highest on record from 2019 through the middle of 2020, with the figures expected to remain high after the end of the COVID-19 pandemic, according to a new report by Washington, D.C.-based insurance broker Ames & Gough.

While the number of claims filed during the period remained relatively flat compared to previous years, the size of payouts surged, according to Ames & Gough's annual survey of 11 leading lawyers' professional responsibility insurers, which together provide insurance to 80 of the 100 largest law firms in the U.S. by revenue.

Nine of the 11 insurers surveyed reported participating in a claim payout that exceeded $50 million during the period, with two paying a claim between $150 million and $300 million and four paying a claim that topped $300 million, the report found.

The same number of insurers said the frequency of their claims either decreased or stabilized between 2019 and 2020, with one insurer reporting a 6 percent-to-10 percent increase in claims and the other experiencing a hike that fell between 11 percent to 21 percent, according to the report.

The largest number of malpractice claims were concentrated in the practice areas of corporate and securities, business transactions and trusts and estates, according to the report.

ALSPs SURGE: Alternative legal service providers (ALSPs) have accelerated their growth to a nearly $14 billion market share globally and are quickly becoming a mainstream segment of the legal market, according to a recent study released by research consultancy Thomson Reuters.

The growth comes as "competitive concerns are diminishing, and law firms and corporate legal departments are increasingly open to partnering with ALSPs to stimulate growth and reduce costs."

The fastest growth has been among ALSPs that law firms have formed as captive subsidiaries, while U.S.-based law firms are more likely to use ALSPs for litigation-related services.

Law firms and corporations say that over the next five years they expect to nearly double the average number of ALSP service lines they use.

One of the fastest-growing services where law firms are engaging ALSPs is consulting on legal technology as "ALSPs are often nimble early adopters and innovators for cutting-edge technologies such as artificial intelligence, block-chain, predictive analytics and smart contracts."

FISH STICKS? REALLY…?: The U.S. Second Circuit has set aside the copyright claims against Amazon, Netflix and Apple brought by the writers of a children's song about fish sticks.

The song was used in a film about burlesque dancers, with judges saying the movie is a documentary afforded leeway in fair-use commentary.

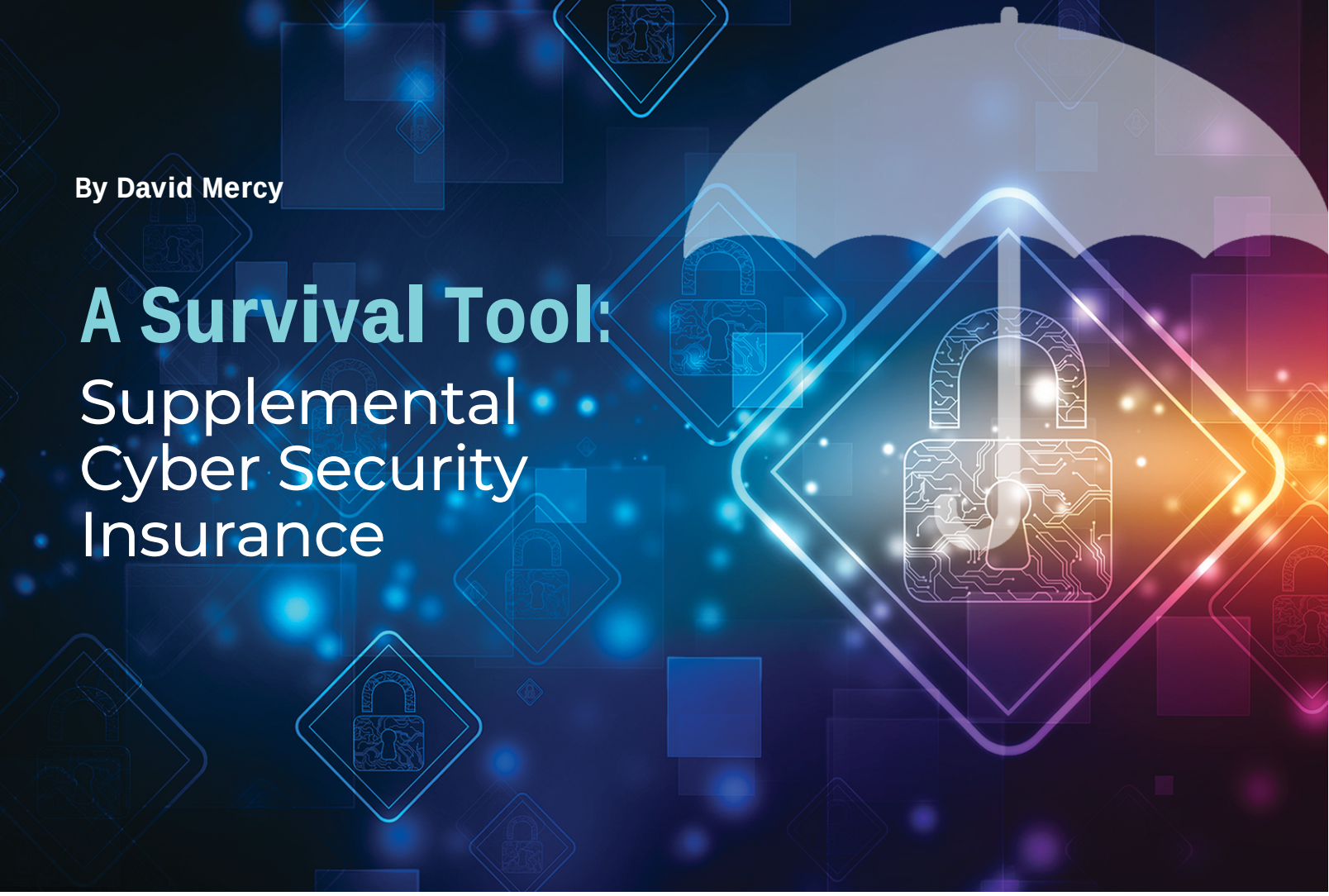
Songwriters Tamita Brown, Glen S. Chapman and Jason T. Chapman sued Netflix Inc., Amazon.com Inc. and Apple Inc. in 2020, alleging that the media companies, directly and indirectly, infringed their copyright in a children's song titled "Fish Sticks n' Tater Tots" by distributing and streaming a documentary film titled Burlesque: Heart of the Glitter Tribe that incorporates a portion of the song without authorization.

The plaintiffs' song describes a student's journey from her classroom to her school cafeteria to eat fish sticks and tater tots for lunch.

The film chronicles the stories of burlesque dancers in Portland, Oregon, through interviews, backstage preparations and on-stage performances. One of the scenes depicts a performance in which one of the dancers, first dressed as a "reverse mermaid"—with the head of a fish and the legs of a woman—changes into brown pants and steps from behind a sign labeled "hot oil" to appear as though she has been transformed into a fish stick.

By David Mercy

A Survival Tool: Supplemental Cyber Security Insurance



NOBODY LIKES TO GET SUED or be subject to massive fines, especially lawyers. Attorneys fight suits and fines, not fall prey to them, right?

And, yet the danger is there, and part of any firm's due diligence is to ensure that the highest level of protection is in place in all areas, specifically in terms of liabilities stemming from two types of network catastrophes—security failures and system failures.

Any unauthorized network intrusion, from a hacker data theft to a ransomware attack is a system breach. The body that investigates and imposes penalties is the enforcement arm of the California Consumer Privacy Act (CCPA).[1]

Although the penalties levied for violations may appear to be small at first glance—$100 to $750 per consumer per incident, they can quickly grow to a huge amount when taken collectively.

As a rule, cyber thieves do not breach a system to steal a single client's sensitive, personal information—they break in to steal the information on every client in the system.

How many clients are included in a typical attorney's data system, including dormant or former clients? From solo practitioners to the biggest law firms, this number, of course, can vary greatly.

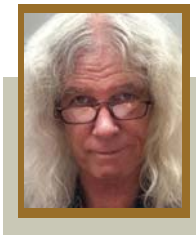
The Stark Math

Let's use a workable number which typically would be on the small side: 100 clients, each the subject of only a single incident, per attorney.

The low-ball penalty—100 x $100 = $10,000; the high, 100 x $750 = $75,000.

This is not welcome news for a solo practitioner, and while it may not bankrupt a practice, it will hurt.

Looking at a mid-sized firm with ten attorneys, the penalty would run between $100,000 and $750,000, while an even larger practice with 30



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attorneys would be hit with a fine of $300,000 to $3,000,000.

And so on and so on.

The penalties above only detail the civil penalties for non-compliance with CCPA regulations and are levied by the California Attorney General.

Consumers have the private right of action to sue if their non-encrypted or non-redacted personal information is subject to "unauthorized access and exfiltration, theft or disclosure" due to a business' failure to "implement and maintain reasonable security procedures appropriate to the nature of the information."

It is impossible to formulate the damage to a firm that would result from multiple suits brought by clients whose sensitive data had been compromised.

This does not include consumers with the standing to show that a data breach caused them real world losses, such as the loss of a job due to personal information stolen and, for example, posted onto Twitter, Facebook and other social media platforms.

To put it mildly, adding it all up, it is sobering to consider the consequences of having to face the ultimate liability of a devastating data breach to a law firm's database.

Already Covered?

Maybe…maybe not, but even if a firm has liability insurance, the question needs to be asked as to what extent the coverage goes as many attorneys think that a data breach incident must be covered by their Legal Professional Liability (LPL) insurance.

While, typically, an LPL policy may offer some rudimentary protections, the intricacies of cyber-loss culpabilities are not the policy's focus, and LPL policies will only offer the most basic coverage.

Questions need to be asked—for example, what conditions exist in your LPL policy that could affect your coverage? Does it cover against fines as well as litigation, and if so, to what amount?

Read the policy's wording very carefully. Coverage may handle some fines, but not all, and although there may be $1,000,000 in coverage, there is often a 'sublimit'—in effect, a deductible—with responsibility to pay a penalty that could hover in the range of $200,000.

Make Sure You're Covered

Supplemental cybersecurity insurance is absolutely critical.

To avoid any misconceptions, know this—breaches to your internal data system can occur despite of the perceived excellence of your IT or managed services provider (MSP).

Even with the fullest extent of Next Generation network security, it is typically an end-user in the law firm that falls prey to a phishing expedition and injects malware into the system.

> "To be optimally effective, a policy must include two event types—security failures and system failures."

The best analogy is that your network is like a castle.

Instead of a moat and drawbridge, a firm relies on anti-virus (AV), firewalls, anti-spam filtering, and other safeguards to deny cybercriminals entry. What good is a castle wall if someone inside accidentally leaves the gate open and the drawbridge down? So it is with a network as well.

Unfortunately, in the real world, it is not a matter of if, but of when a network breach will occur.

According to the American Bar Association, 29 percent of law firms fell victim to a cyber-attack as of their October 2020 report—up 3 percent from the prior figure of 26 percent for 2019, while the number of cyber-attacks on law firm networks have grown exponentially with the onset of the COVID lockdowns and the transition to an increased remote workforce.[2]

For small firms, which may not use a top-notch MSP, once a serious breach or a ransomware attack occurs, a good cybersecurity insurance policy offers coverage in a number of areas, including the extremely high cost of data/disaster recovery if a poor data backup system was in place, or if such a system did not exist in the first place.

For firms that use an MSP, it is advisable to ensure that local backups are unconnected to the network and that cloud backups are in place and routinely tested for both reliability and retrievability.

Unfortunately, too many so-called IT Guys are buffoons in MSP clothing, so the designation of managed services provider by itself is not a guarantee of competence.

Navigating Coverage

Law firms need to consult their insurance agent for any quotes and particulars about different types and levels of coverage.

To be optimally effective, a policy must include two event types—security failures and system failures. As for coverage itself, it is advisable to inquire about five areas that should be present in the policy:

- Network Security:
  Typically includes first-party costs incurred as a result of dealing with the attack, such as IT forensics, breach notification to clients, negotiations and payment of a ransom. Some policies widen the coverage to include public relations, legal expenses, call center setup, etc.;

- Privacy Liability:
  This covers the liabilities and third-party costs incurred from a cyber incident or a privacy law violation,

specifically addressing contractual liabilities or regulatory investigations.

This includes any indemnification a company would make with clients to compensate them in the event of a cyber incident or data breach. It also covers any fines, penalties or legal expenses incurred due to a regulatory investigation;

- Media Liability:
  This covers intellectual property infringements in the area of a firm's advertising, specifically online, including social media posts, but can be negotiated to include printed material as well;

- Errors and Omissions:
  In the event that a cyber breach or attack rendered a firm unable to fulfill its contractual obligations, this coverage addresses allegations of breach of contract or negligence, including legal defense costs or indemnification in the event a suit is filed against a firm by a client; and,

- Network Business Interruption:
  This interruption addresses system failures which are not due to a security failure allowing a successful cyber-attack. It addresses end-user human error, or hardware/software failures, etc. The harm to a firm's reputation and any continuing impact said harm has on the firm's continuing profitability are also covered under this umbrella.

As always, insurance is one of those things that one must have, but would rather not have to use. The time-worn adage stands: an ounce of prevention is worth a pound of cure.

CRITICAL DO's and DON'Ts

Adhering to some basic rules can go a long way in helping a firm avoid situations which can result in a claim being filed.

First, encrypt all client information. Data should automatically encrypt when it's backed up to the cloud, but you need to ensure that all data on an office network is also encrypted.

Do not leave unencrypted data on mobile devices such as laptops, iPads, or iPhones. The theft of any of these devices opens a firm up to potential liability.

Take care with passwords. Make them hard to guess, but, at the same time, make them easy for you to remember.

For example, a May 23 anniversary could become Mai523. Do not write them down, share them or use the same password for everything, because when a cyber thief breaks in, he will have the keys to your kingdom and the pillaging begins. A reliable password manager can be utilized to securely store multiple passwords so just the password for the manager would need to be remembered.

Take notice of any email anomalies. If something is off or differs from the norm—a different format for a vendor; a link or attachment where usually there isn't one, in a PDF file, for example; any internal email message that is unusual—raise a red flag and think twice before clicking any links or attachments.

Client data is sensitive and highly confidential. It should always be secured in whatever format it appears, whether on paper or on the network, on a copy or fax machine, and particularly in an unattended reception area.

Conclusion

Two consultations are advised: one with the firm's IT provider to ensure that effective defenses and a reliable backup system are in place to help prevent and cure an attack, and another with the firm's insurance provider to ensure that the firm is not holding the short end of the stick in case a successful attack occurs.

[1] TITLE 1.81.5. California Consumer Privacy Act of 2018 [1798.100 - 1798.199.100].
[2] https://www.americanbar.org/groups/law_practice/publications/techreport/2020/cybersecurity/.

By Michael D. White

UWLA Hosts Moot Court Competition Via Zoom

THE UNIVERSITY OF WEST LOS Angeles School of Law (UWLA) recently hosted the 2021 Roger J. Traynor Moot Court Competition—the first time the event was conducted online.

The complex logistical planning required a pivot to an online platform for this 10-school, 19-judge event and served law students throughout California.

The Traynor event—first held in 1969 and named for the late Associate Justice of the California Supreme Court—is a nationally recognized appellate moot court competition. Only bench officers and legal specialists are eligible to serve as oral argument judges at the annual event.

Among those judging the competition was SFVBA Board of Trustee member Alan Eisner.

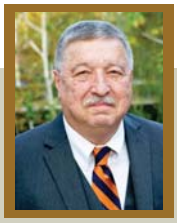
The event "was an extraordinary event for many reasons. The best law schools in the country competed—Berkeley, Hastings, Loyola, McGeorge and others," says Eisner.

Held over a two-day period, the competition was "a fascinating story of David beating Goliath. Despite accomplished competitors from these prominent schools, a student from UWLA won the award for best advocate. The UWLA team also finished in second place."

UWLA School of Law students Dalia Maayah and Patricia Snyder were victorious in the Final Round of the Oral Argument competition, besting a team from Loyola Law School.

Snyder is the daughter of long-time SFVBA member, attorney Ron Supancic of The Law Collective in Woodland Hills. Both she and Maayah work full-time while attending UWLA law school.

The Championship Round was presided over by California Court



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 40 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.

of Appeal Administrative Presiding Justice Arthur Gilbert, Administrative Presiding Justice Elwood Lui, and Associate Justice Helen Bendix.

The UWLA team advanced to the Final after victories in two preliminary oral argument rounds a day earlier. In the preliminary rounds, involving 26 competitors from ten California-based law schools, Snyder received the highest individual scores of any participant and was awarded the Geoffrey Wright Award for Individual Achievement in Oral Advocacy.

> “Snyder received the highest individual scores of any participant and was awarded the Geoffrey Wright Award for Individual Achievement in Oral Advocacy.”

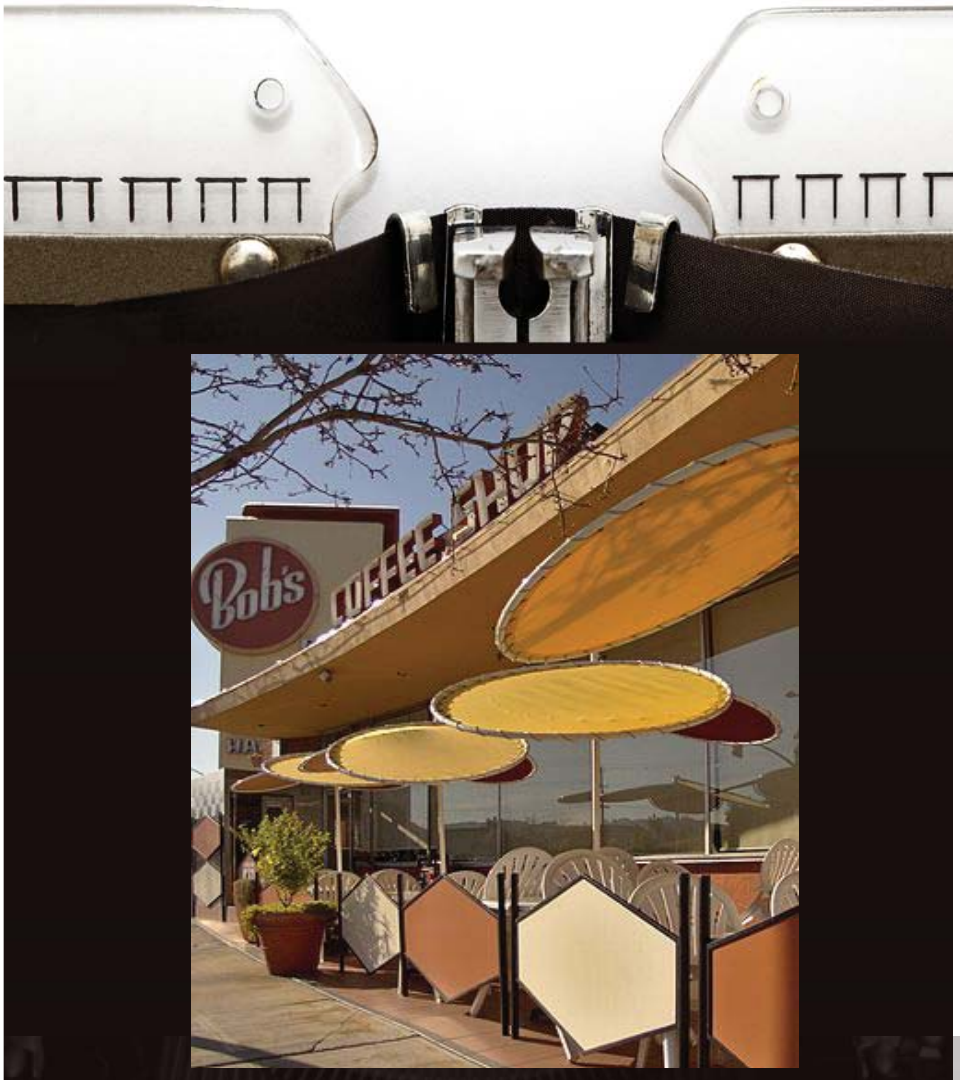
UWLA also received a Second Place award in the Excellence in Appellate Advocacy category for outstanding overall performance and finished third in the separate Written Brief competition.

The victory marked the second time in the last four years that a UWLA moot court team under the direction of Professor David Glassman has won the Traynor.

In 2020, Professor Glassman’s team won the Best Respondent’s Brief award. His teams have also prevailed in several other statewide and national competitions.

The final round of the competition can be viewed on the school’s YouTube channel at: https://youtu.be/clxF_jY1h70.

Retrospective



In 1936, entrepreneur Bob Wian purchased Bob’s Pantry, a 10-stool hamburger stand in Glendale.

Two years later, he changed the name from Bob’s Pantry to Bob’s Big Boy and converted the stand into a drive-in restaurant, offering a double-deck hamburger, French fries and shakes “so thick you can eat them with a spoon,” all for 60 cents.

One of two Bob’s in the Valley, the restaurant on Riverside Drive in Burbank is the oldest remaining Bob’s Big Boy in the United States. Built in 1949, its unique 1940s Moderne architectural design and its iconic community status led to the site being designated a California Point of Historical Interest in 1993.

Over the years, the Burbank Bob’s has been visited by countless entertainment industry notables, including Bob Hope, Jonathan Winters, and The Beatles, who dined at the Burbank location during their 1965 U.S. tour.

By Erin Joyce

Flat Fees: Follow the Rules, No Problem

This article was recently published in Vol 7., No. 1 of Attorney at Law magazine and is being reprinted in Valley Lawyer with permission and full attribution.

WITH THE ADOPTION OF THE new Rules of Professional Conduct in November 2018, California joined the vast majority of jurisdictions that require attorneys to deposit all client monies, including advanced attorney fees, into a client trust account.

Former Rule 4-100 only required deposits for costs to be deposited into a CTA.

However, advanced fees did not have to be deposited into a CTA. Many attorneys did not routinely deposit advanced fees into a CTA.

Now advanced fees need to be deposited into a CTA pursuant to Rule 1.15, which covers safekeeping funds and property of clients and other persons in almost all cases. The only carve-out for requiring advanced fees to be deposited into a CTA is for a flat fee, and then only in specific circumstances.

Attorneys who routinely perform legal work on a fixed-fee or flat-fee basis need to pay special attention to Rule 1.15(b) so they do not run afoul of the new trust accounting rules.

Flat fees are appropriate in relatively simple matters such as a non-contested divorce or writing a basic trust.

They can also work on more complex cases when the representation can be broken down into distinct segments or phases, such as an immigration case which clearly delineates the process for obtaining the visa, including the filing of the petition, the filing of the immigrant visa application and the representation at the Consulate interview.

Instead of one fee agreement stating a flat fee for all these services, the attorney can break down each segment and charge a separate flat fee for each service.

The first important point for attorneys accepting flat fees under the current Rules of Professional Conduct is that all flat-fee agreements should be in writing, no matter the amount of the flat fee, since the attorney has to disclose in writing that the client could

Attorney **Erin Joyce** has extensive experience in State Bar investigations and disciplinary proceedings, plus over twenty-five years of civil litigation practice. She is based in Pasadena and can be reached at erin@erinjoycelaw.com.

require the flat fee to be deposited into a CTA and that the client is entitled to a refund of any part of the flat fee that has not been earned.

The other important provision is that the attorney should keep accurate time records on all flat-fee cases since the attorney must be able to determine what part of the flat fee has been earned if the attorney is terminated prior to completing the legal services. A flat fee is not earned until full performance.

Once the attorney has fully performed, the attorney has earned only the flat fee, not the value of all the time invested in the case.[1]

Until the attorney has fully performed on a flat-fee matter, the attorney is only entitled to *quantum meruit*, or the reasonable value of the services, and must provide an accounting on demand.[2]

Time records are invaluable to proving up *quantum meruit*, however, for a flat-fee arrangement, the time records won't be the final word on the reasonable value of the attorney's services even if the work performed on an hourly basis exceeded the flat fee.

This is because the client did not enter into an hourly arrangement with the attorney, but an agreement for the attorney to fully perform the contracted services for a certain flat fee.

If the attorney has not fully performed prior to termination, it is expected that the attorney has not fully earned the flat fee. In determining the value of the attorney's services, the time spent by the attorney, how far along the work is on the client's matter, and how much is left to be completed to fully perform the contracted work are all important factors to consider.

For instance, an attorney who brought a criminal case all the way to a preliminary hearing who is terminated the night before is likely to be able to show the attorney fully earned the flat fee based on the hours worked and how far along the attorney advanced the client's matter.

Conversely, an attorney who spent many hours completing a trademark application who did not yet submit the application to the Patent and Trademark Office will likely owe a refund if the flat-fee agreement provided for the filing of the trademark application and the response to the first office action, based on how far the representation had advanced at the time of termination.

As a rule, an attorney who accepts flat fees for legal services needs to comply with Rule 1.15(b) to avoid potential trust accounting violations.

[1] *See Reynolds v. Sorosis Fruit Co.* (1901) 133 Cal. 625, 628.
[2] In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 188-189.

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Meet Member and Client Services Coordinator Meydell Castro

ROSIE SOTO COHEN
SFVBA Executive Director
rosie@sfvba.org

MIGUEL VILLATORO
ARS Associate Director of Public Services
miguel@sfvba.org

PLEASE WELCOME OUR NEW SFVBA MEMBER and Client Services Coordinator and Fee Arbitration Administrator, Meydell Castro.

Meydell was born in Matagalpa, Nicaragua. Her family migrated to the United States when she was just seven years old and, since then, she has been a life-long San Fernando Valley resident.

She was raised in Panorama City, graduated from Panorama High School, attended Valley Community College and transferred to California State University, Northridge to continue her studies. She recently obtained a Bachelor's degree in Political Science in May of 2021.

"It was very difficult to navigate the university system as a first-generation immigrant, but thanks to the guidance and support from my community, I can now proudly say I'm officially the first college graduate in my family!"

In her previous role as an emergency dispatcher, she gained experience assisting hundreds of clients from all over the country undergoing stressful, sometimes even life-threatening situations.

"My experience as a dispatcher during the pandemic really solidified my interest in public service," says Meydell.

"It really exposed me to the harsh circumstances so many people are living through, and it made me want to help in any way that I can, even if that help simply means pointing someone in the right direction."

In her spare time, she enjoys volunteer work and is constantly looking for ways to get involved in her community. She is currently working to organize a mentorship program of young professionals in the Valley to support high school students with the college application process and beyond. Her goal is to connect local high school students to the many resources and networks available to them.

In addition to her duties as a Service Consultant Coordinator and Arbitration Fee Administrator at SFVBA, Meydell will assist as an Attorney Referral Service consultant where she can direct potential clients to the great attorneys on our panel. She believes the skills she gained throughout her six years working in various customer service-oriented positions will help her "effectively assist and direct" prospective clients.

"I am very grateful and excited I have the opportunity to work with the Bar because it has so many incredible resources available that can really help residents in the San Fernando Valley."

In the short time Meydell has been at the San Fernando Valley Bar Association, she has been able to assist several clients in obtaining the legal counsel they are seeking.

"Sometimes there are situations where clients just need general information, and I want to make sure I provide them with every resource available," she says.

> "I am very grateful and excited I have the opportunity to work with the Bar because it has so many incredible resources available that can really help residents in the San Fernando Valley."

Meydell first became interested in the legal field through her Political Science studies and is now very passionate about the role of law in society.

Her goal is to eventually attend law school, focusing on immigration law and its intersection with the criminal justice system.

"I've witnessed first-hand the types of issues that can arise when people don't know their rights or what legal recourses they have in certain situations," says Meydell.

"I want to become an attorney so I can help people from non-traditional backgrounds and expand access to the legal system."

Valley Community Legal Foundation
of the San Fernando Valley Bar Association

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VKeeny@lacourt.org

THIS YEAR, THE VALLEY COMMUNITY LEGAL Foundation (VCLF) presents $7,500 in scholarships to an extraordinary group of talented and committed high school students in the San Fernando Valley.

One is a student leader in March for Our Lives, a national organization dedicated to ending gun violence. Another works with the Koreatown Immigrant Workers Alliance to present *Know Your Rights* workshops to recent immigrant communities, while still another has organized a youth group at her church and, with the help of social media and a local grocery store, distributes food and clothing to homeless people in the community.

All of these extraordinary young people were honored recently by the VCLF as part of our 2021 Scholarship Program, which recognizes exemplary Valley high school students who have shown a commitment to pursuing careers in law or law enforcement.

The VCLF presented its top honor to Francis Arellano, a senior at James Monroe High School's Law and Government Magnet program.

Francis was awarded the $2,500 Student Excellence Award in recognition of her extraordinary achievements. Not only did Francis maintain a 4.0 grade point average, but she won high honors at the California High School Speech Association Tournament earlier this year for her original advocacy piece, *The Scarlet E*, which focused on the pandemic eviction crisis and its impact on undocumented people. She already has considerable experience as a community organizer and immigration rights activist, developed through her work with the Oaxacan, Korean and Bangladeshi communities in Los Angeles' Koreatown district.

A first-generation Zapotec-American, Francis will attend Bryn Mawr College in the fall with the hope of one day becoming an attorney focusing on immigration, labor and housing law.

Two other seniors from the Monroe Law and Government Magnet—Sophia Carrillo and Angela Muralles—received $1,500 Student Distinction Awards.

As captain of the school's Mock Trial Team, Sophia led Monroe's team to victory in the 2019 Los Angeles County Mock Trial Championship. She also won high honors for Speech and Debate in statewide competitions and a First Place Award for negotiation skills at Loyola Law School's Conflict Resolution Training Program in 2019.

Angela placed 7th statewide for her original advocacy speech on the working conditions facing the immigrant community and was a semi-finalist in the 2020 Los Angeles County Mock Trial championship. She hopes to one day become an immigration attorney and advocate.

VCLF also recognized Naydelin Chimil Tico (James Monroe High School) and Reese Coblentz (John Burroughs High School) for their Outstanding Achievement and Service with $1,000 scholarships.

Reese led campus protests and vigils against gun violence and served as a local food drive coordinator, while maintaining a high GPA and excelling in volleyball and choir.

> "Despite these obstacles, all of these students persevered to become honors students and leaders."

Naydelin developed a passionate interest in environmental law after working on beautification projects in Pacoima and addressing homelessness issues with her church. As president of her school's Key Club, she was actively involved in motivating and organizing her fellow students during the COVID-19 pandemic.

Each of these students demonstrated resourcefulness, commitment and maturity far beyond their years, often in the face of great adversity. Most come from low-income or first-generation families who have struggled with economic scarcity and language barriers.

One of our scholarship recipients recalls seeing her father, who was working as a dishwasher, come home from work with burns on his arms; another experienced domestic violence early in her life, which tore apart her family; another had to help her mother sell food on the streets during the pandemic in order to survive.

Despite these obstacles, all of these students persevered to become honors students and leaders.

As the charitable arm of the San Fernando Bar Association, the VCLF proudly recognizes these five high school seniors for their significant personal achievements and looks forward to their future contributions to our community.

A Tragically Common Story

MINYONG LEE
NLSLA Senior Attorney

minyonglee@nlsla.org

THE COVID-19 PANDEMIC brought with it a terrifying rise in rates of domestic violence across the globe. But much like rates of infection, illness, and death, the impact of increased domestic violence has not exacted an equal toll.

A study done by the Center for Survivor Advocacy and Justice shows that rates of abuse increase dramatically—to 50 percent and higher—for those marginalized by race, ethnicity, sexual orientation, gender identity, citizenship status, and cognitive and physical ability.

At Neighborhood Legal Services of Los Angeles County (NLSLA), we see evidence of this unequal toll in the lives of the clients seeking our help.

A client named Valerie (a pseudonym) recently sought assistance with obtaining a restraining order against her partner, a U.S. citizen who routinely used Valerie's immigration status to coerce her to stay quiet as he physically, verbally, and sexually assaulted her—often in front of their 7-year-old son.

After her husband lost his job as a result of the pandemic, he began drinking heavily, spending all his time at home. Not surprisingly, the abuse escalated, as did his threats to call law enforcement and have her detained and separated from her son if she dared to speak up.

Valerie's story is horrific, but sadly, it is not unique.

The pandemic and subsequent economic shutdown have compounded the stressors that can lead to violence, and that violence has had an especially devastating impact on undocumented women, whose fear of deportation and separation from their children have kept them silent even as their abuse intensifies.

Family Code Section 6320 now explicitly states that abuse, considered in restraining order hearings, includes "compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage."

> "NLSLA provides more than legal assistance and representation—our advocates validate our clients' experiences."

We find this explicit statutory language to be a useful tool in cases where this type of abuse is being used, especially during the pandemic.

At her court hearings, Valarie was represented by NLSLA, trauma-informed attorneys. This ensured that she received the representation and protections she needed and securing full custody of her son. They also made sure that she was able to move back into her house, and has the benefits she needs to get her through until she can find employment. She is also currently in the process of applying for a special visa for victims of domestic abuse.

NLSLA provides more than legal assistance and representation—our advocates validate our clients' experiences. We know that a restraining order is not simply an order written on paper, but often our clients' first time feeling seen and heard by those in authority.

We stand with our clients as they receive affirmation that their lives are valuable enough to break free from a cycle of violence and fear.

NLSLA would greatly appreciate partnering with attorneys and volunteers who are interested in helping women like Valerie feel empowered and begin to heal.

Information on how you can donate or volunteer can be found on our website, nlsla.org.

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