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JANUARY 2022 • $5

A Publication of the San Fernando Valley Bar Association



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## Administrative Hearsay Decoded

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# CONTENTS



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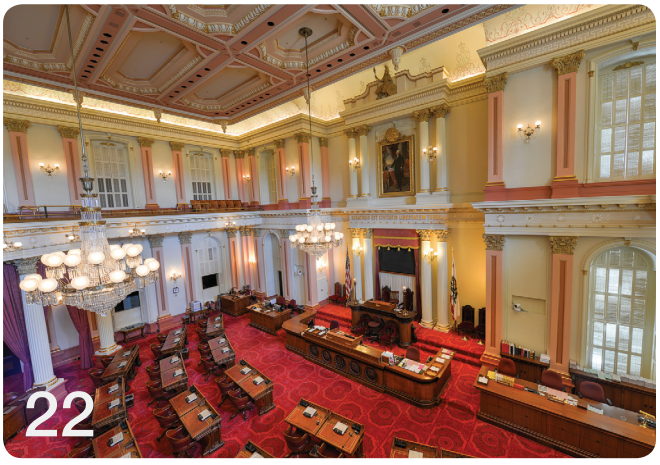




On the Cover: California State Assembly Chamber in Sacramento

## FEATURES



## DEPARTMENTS

VALLEY LAWYER

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

EDITOR
Michael D. White

GRAPHIC DESIGNER
Marina Senderov



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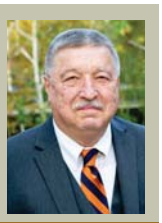

michael@sfvba.org

ANOTHER YEAR GONE BY THE BOARD; AND one year closer to the San Fernando Valley Bar Association celebrating its 100th year anniversary.

Take a moment and think about it. A century is a long time and, over that bumpy period, the Bar has shouldered through a Depression, war served up both hot and Cold, social chaos, a global pandemic, and more largely because of the strong foundation upon which it was founded.

In 1926, to be exact, the SFVBA was founded by a small group of visionary attorneys who not only saw the Valley for what it was, but for what they envisioned it would become. They laid a foundation of laudable goals and a dedication to service to its members and the community at large that has never faded in even the most challenging of times.

I thought a lot about all that when weaving together the article in this issue of *Valley Lawyer* on the relationship between the SFVBA and its partner organizations.

Different trains, each pulling its own load, steaming along on parallel tracks with all headed toward the same goal—making the San Fernando Valley and it's the region a better place to live.

Over the years, despite the challenges, the Bar, and its partners, have provided its members with countless opportunities to make them more active, informed members within the legal community.

They depend on it to brief them on important developments in the law, new legislative rulings, and more; provide them with opportunities to network with their peers; offer valuable educational programs; gain leadership experience outside a traditional office format; develop long-term friendships; and serve a community that desperately seeks ready access to the justice system.

> "Is the Bar Association a perfect, flawless organization? No, not really. But, try to show me one that is. I could enjoy a good laugh right about now."

Is the Bar Association a perfect, flawless organization? No, not really. But, try to show me one that is. I could enjoy a good laugh right about now.

The fact is, no group, wrought by human hands with two or more people on the roster, can never be either perfect or flawless.

I've got a secret—for every one of us, either individually and/or collectively, staying afloat in the worst of times and prospering in the best is the ability to endure, to play the hand we've been dealt and do the best we can with what we've got.

It might be a good time to reflect, not only on the past year, but what motivated the brave souls who founded the San Fernando Valley Bar Association in the first place—a vision of not what was, but what it could become…if it endured.

It has and it will.

# CALENDAR

## JANUARY 2022

| SUN | MON | TUE | WED | THU | FRI | SAT |
|---|---|---|---|---|---|---|
| **SFVBA COVID-19 UPDATES**<br>sfvba.org/covid-19-corona-virus-updates/ | | | | Happy New Year **1** | | |
| 2 | 3 | 4 | 5 | **ZOOM MEETING 6**<br>**Membership and Marketing Committee**<br>6:00 PM | 7 | 8 |
| 9 | 10 | **WEBINAR 11**<br>**Probate and Estate Planning Section**<br>***Extra, Extra, Read All About It – Changes in the Case Law and Legislation!***<br>12:00 NOON<br>Marshal Oldman and Marc Sallus give their annual review. Don't miss this entertaining and critical update! (1 MCLE Hour)<br>**Board of Trustees**<br>6:00 PM | 12 | fastcase / San Fernando Valley Bar Association<br>Free Fastcase Webinars<br>*Get the most out of Fastcase*<br>**All SFVBA Members have access to Fastcase**<br>https://www.fastcase.com/blog/free-fastcase-webinars/ | 15 |
| 16 | **17**<br>MARTIN LUTHER KING DAY<br>**SFVBA OFFICES CLOSED** | **WEBINAR 18**<br>**Taxation Law Section**<br>***California Tax Residency: The Issues Everyone Is Talking About***<br>12:00 NOON<br>Attorneys Dennis Perez and Michael Greenwade discuss the issues California taxpayers face when changing their domicile and residency to another state or country, the audits the California Franchise Board conducts in this area and practice tips for handling these issues. This presentation will be helpful to anyone planning to leave California, the professionals advising them, and to those faced with FTB audits of these issues. (1 MCLE Hour)<br>**ZOOM MEETING**<br>**Mock Trial Competition Committee**<br>6:30 PM<br>Contact events@sfvba.org for further info. | **WEBINAR 19**<br>**Employment Law Section**<br>***Employment and Labor Law Update***<br>12:00 NOON<br>Attorney Susannah Galiano of the Light Gabler firm will discuss new employment laws for 2022. The seminar will discuss the current covid employee compliance issues and changes to employment laws. The seminar is of interest to business and employment attorneys and anyone working with or supervising staff members. (1 MCLE Hour)<br>**ZOOM MEETING**<br>**Editorial Committee**<br>12:00 NOON | **ZOOM MEETING 20**<br>**Inclusion and Diversity Committee Meeting**<br>12:15 PM | 21 | 22 |
| 23 | **WEBINAR 24**<br>**Family Law Section**<br>***New Laws***<br>5:30 PM<br>Robert Schibel and Lionel Levin once again review and discuss the recent laws every family law attorney should know about! (1 MCLE Hour) | 25 | 26 | 27 | **WEBINAR 28**<br>**SFVBA, MCBA and SCVBA Present**<br>***Stretch Your Body and Relax Your Mind!***<br>4:30 PM – 5:30 PM<br>Monthly Interactive Exercise Workshop led by Board Members Alan Eisner and Taylor Williams-Moniz. All levels welcome, no equipment needed. Free to all. | 29 |
| 30 | 31 | | | | | |

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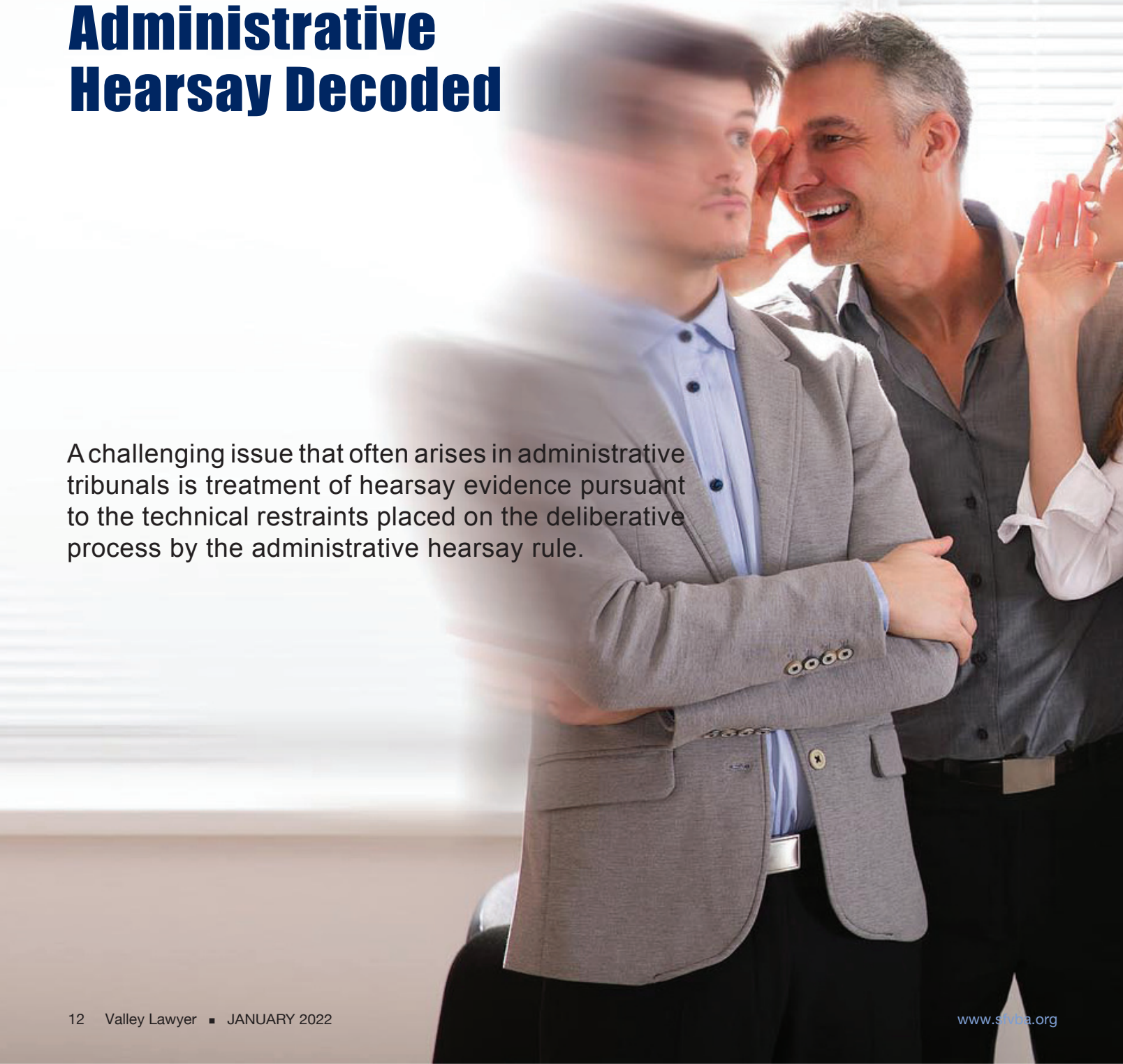
By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 21.

By Lisa Miller

# Administrative Hearsay Decoded



A challenging issue that often arises in administrative tribunals is treatment of hearsay evidence pursuant to the technical restraints placed on the deliberative process by the administrative hearsay rule.

CALIFORNIA'S CENTRAL ADMINISTRATIVE hearing examiner dispatch hub received 3,678 administrative files for determination in 2018-2019 alone.

This number does not include larger California and Federal agencies processing numerous administrative appeals internally. Total administrative hearing activity is growing and expands with the creation of every new agency and program.

A challenging issue that often arises in administrative tribunals is treatment of hearsay evidence pursuant to the technical restraints placed on the deliberative process by the administrative hearsay rule.

**Brief Overview**

Hearing examiners' primary role is to determine relevant facts. The administrative hearsay rule in administrative proceedings allows hearing examiners to rely on these facts, allowing them to render equitable determinations on competing claims.

A statement that was made other than by a witness while testifying at the hearing that is offered to prove the truth of the matter stated is hearsay evidence. Hearsay testimony is testimony not within the witness' own knowledge; it is something the witness hears someone else say, and then, in a court hearing, the witness wants to retell what was heard.

A document written by someone other than the witness can be hearsay evidence. In this situation, the witness is offering the document, authored by someone not present in court, to the tribunal to prove or disprove some important point in the case.

Hearsay evidence is generally not admissible in civil court because the party against whom it is offered cannot cross examine the person who first made the statement or wrote the document. This offends a Constitutionally guaranteed right to which parties are entitled: the right to confront witnesses against them. Like most legal rules the hearsay rule has many exceptions.

The most significant mangling of the right to confront, in the context of the rule against hearsay, occurs in administrative tribunals.

**Hearsay Evidence in Administrative Tribunals**

Generally, in an administrative proceeding, hearsay evidence, uncorroborated by other evidence, is not sufficient to support a finding.

The California Code states:

> *"The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions."*[1]

Administrative Adjudication—Formal Hearing Subsection (d) to § 11513 provides specific guidance regarding the role of hearsay in administrative tribunals:

> *"Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions…"*

Supplementing or explaining other evidence means that a party is not proving material facts with the hearsay evidence alone. The over timely objection reference has been seriously questioned in several cases.

**Example 1**

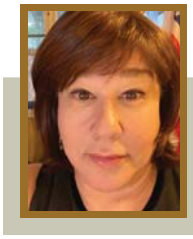
Hearsay evidence may be presented in an administrative tribunal to supplement or explain other evidence. When offered to explain other evidence already admitted to the trial, the evidence that would otherwise be hearsay is *not* being offered to prove (or disprove) a particular important fact in the case.

Because there are not facts being proved or disproved by the offered administrative hearsay testimony or document, but merely explained, the hearing examiner may properly allow the evidence to come in at the hearing.

**Example 2**

In an administrative hearing, several unsworn medical reports by physicians who had examined the claimant but who were not present at the hearing were introduced into evidence.

A medical expert interpreted these medical reports because the examining physicians were not testifying at the hearing.



**Lisa Miller** is an administrative judge, hearing and deciding tax controversies. She lectures on administrative law throughout the US and EU and is the author of the ABA practice manual *Art of Advocacy in Administrative Law*. She can be reached at LM@LexLawCorp.com.

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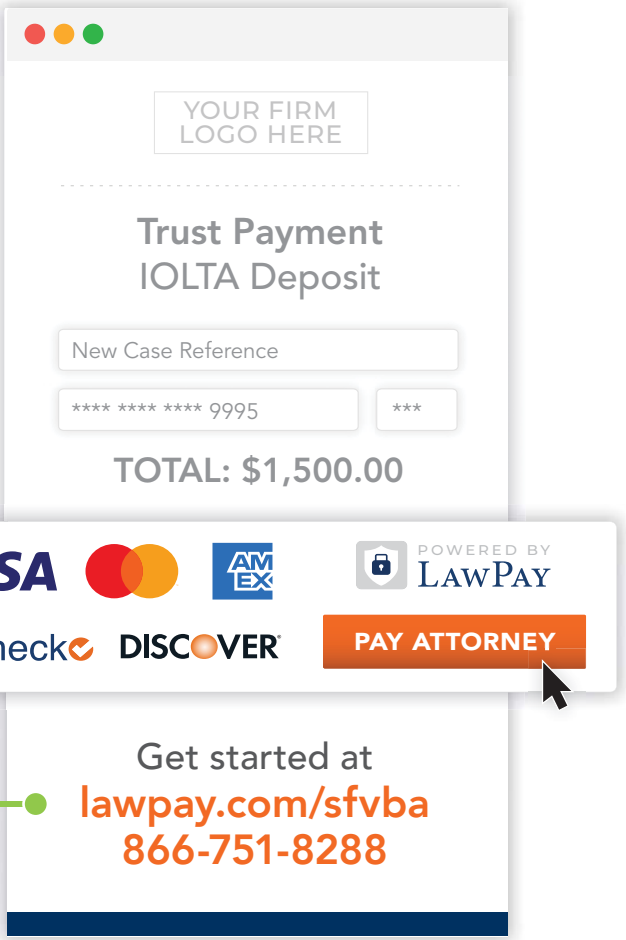


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Claimant objected to the use of these written medical reports on two grounds: unconstitutional denial of Claimant's right to confront and cross-examine adverse witnesses and as impermissible hearsay testimony, alleging the reports were hearsay based upon hearsay.

The reviewing court hesitated to accept as substantial evidence the unsworn written medical reports containing opinions of medical experts submitted as original evidence.

The court held that hearsay evidence, such as unsworn medical reports of examining physicians who were not present and did not testify at the hearing, coupled with the interpretation of those reports by a medical expert who had never examined the claimant, is admissible in an administrative hearing.

This type of evidence, alone, is not substantial evidence. Hearing examiners may not rely solely on hearsay testimony to make findings in most circumstances.

**Standards for Admitting Administrative Hearsay**

In 1916, New York State's highest court held that "…there must be a residuum of legal evidence to support" the decision.[2]

The U. S. Supreme Court adopted a form of the "residuum rule," holding that administrative decisions must have "a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence."[3]

The Supreme Court took a different view, however, in *Richardson v. Perales*, finding that a hearing examiner could credit, and give a greater value to, medical reports of doctors presented on behalf of the agency—the Social Security Administration—over the live testimony of a doctor who testified on behalf of a disability claimant.[4]

The Court reasoned that the medical reports, though uncorroborated hearsay, were reliable because the declarants had no evident bias, the reports were available prior to the hearing, they were fairly consistent with one another, and written medical reports are inherently reliable.

Note that the declarants' motive to lie goes to the weight or credibility of the testimony. A particular declarant's bias, which might be part of the overall testimonial picture, does not go to admissibility.

**Administrative Hearsay and Weight of the Evidence**

A Hearing Examiner must consider all the relevant evidence admitted when deciding whether to rely on particular hearsay testimony.[5]

Similarly, reviewing courts must consider the entire record when deciding whether the agency acted properly in relying on hearsay evidence. This includes any portions of the record that might undermine an agency's decision.

When a court has concluded that an agency could properly rely on the hearsay testimony admitted, the opposing party generally failed to put on compelling contrary evidence or any contrary evidence at all.

For example, the Merit Systems Protection Board was justified in upholding the dismissal of a postal worker for sale of cocaine to an informant.

The action was based on police reports of the sale. The police reports were contradicted only by the clerk's unsworn denial in which he failed to explain why he met the informant in a parking lot or how the informant came to acquire cocaine after visiting the clerk at his house.[6]

However, sometimes a reviewing court decides that the hearsay testimony on which the agency relied was not substantial or that the hearsay was generally contradicted by other evidence that likely would have been admissible under normal evidentiary rules, or both.

**Hearsay Can Support Other Hearsay**

Hearsay can in some instances corroborate other hearsay.

Along these lines, the Department of Health, Education and Welfare's decision to deny federal aid to the Broward County School Board because it had sold school property to a number of private schools that discriminate based on race was adequately supported by:

- A questionnaire completed by a public school teacher, after visiting one of the private schools, in which she reported that the school "will not accept black" students.

- A statement by a member of a panel set up to review the school board's federal aid request that the principal of another one of the schools had told her the school did not accept black students.

- An information card obtained from a receptionist at a third school that had printed on it "the policy of the school is one of non-integration."[7]

Reviewing courts will likely require more evidence of reliability before determining that hearsay evidence is substantial enough to support a finding.

An example: Police Officer No. 1 testified at an administrative hearing that he was on patrol in an unmarked police car and was wearing civilian clothes. While driving past the premises at about 9:30 p.m., he observed two or three females in front of the premises.

One of the females hailed the officer over to the curb. The female asked if the officer would come into the premises and buy her a beer.

The next objection to hearsay evidence was concerning Officer No. 2's testimony when the female stated she worked there and received $5.00 for every beer sold.

This was hearsay testimony. However, it was properly admitted as administrative hearsay. But as administrative

hearsay, it could only be used to clarify or explain other properly admitted evidence.

Therefore, appellant rightfully contended that if hearsay evidence, alone, was a basis for finding a violation, then the finding of a violation was not supported by substantial evidence.

**Practice Guidance: Decrypting Reviewing Courts' Analyses**

Several recent cases in which reviewing courts addressed the Administrative Hearsay Rule involved exhaustive analyses that offer a detailed tour of the relevant jurisprudence on the topic.

**Example 1**

In a fairly recent case, the California Court of Appeal issued its decision in *The Utility Reform Network (TURN) v. Public Utilities Commission (PUC).*

In *TURN*, the appellate court stated that hearsay evidence, standing alone, cannot support a finding of fact by the PUC, and, by extension, most administrative bodies. Based on the Court's discussion of the issue, it is likely that the appellate court would apply similar or identical analyses to appeals of administrative findings by other administrative bodies in California.

In *TURN*, a utility sought PUC approval for a power plant and offered the required analysis of the need for the plant. In this regard, the utility submitted a declaration and a petition that had been filed with a federal agency.

The utility did not present testimony, however, on this topic. For this reason, its evidence was exclusively hearsay. Despite this fact, the PUC found substantial evidence of need and denied rehearing.

The hearsay-related issue before the reviewing court was whether the utility's evidence was sufficient to support the PUC's determination of need. The Court held that the evidence before the PUC was not sufficient to support a finding of need. Rather, the sum of the evidence on need was unsupported, uncorroborated hearsay:

[T]he [PUC]'s finding of need is unsupported by substantial evidence, because it relies on uncorroborated hearsay materials the truth of which is disputed and which do not come within any exception to the hearsay rule. Under established California law, such uncorroborated hearsay evidence does not constitute substantial evidence to support an administrative agency's finding of fact.[8]

After the Court found that the PUC's procedures provide that hearsay evidence is admissible in PUC proceedings, it noted the contrast between admissibility and substantiality.

The Court held that in PUC proceedings, the agency may rely on hearsay evidence if the hearsay evidence is substantiated by other, credible evidence. The Court stated that the PUC followed the "residuum rule."

Reviewing courts in California apply the residuum rule to administrative agency decisions. These reviewing courts analyze whether the substantial evidence supporting an agency's decision consists of at least a residuum of legally admissible evidence.[9]

On this basis, the Court held that, in California, generally, "*uncorroborated hearsay cannot constitute substantial evidence to support an agency's decision…*".[10]

When the rule is applied in TURN, despite the seemingly reliable hearsay evidence offered by the utility, that evidence could not support a finding of fact, absent corroboration.The Court found the utility's hearsay evidence was uncorroborated and therefore insufficient to support a finding of fact.[11]

**Example 2**

In another review of a determination by an administrative body, an employee appealed his termination by alleging a lack of substantial evidence.

He argued that the administrative agency's (Agency)'s findings lacked sufficient support because they were based on multiple hearsay alone. In his appeal, the employee argued that, because of the hearsay on hearsay situation, the findings of fact supporting his termination were not based on substantial evidence.

The reviewing court agreed with the employee: the hearsay was unsupported by additional, reliable evidence, so the "factual" findings were unsupported and error. The court went further, interestingly, ruling that the facts were insufficient, despite the fact that at administrative hearing, the employee's attorney never objected to the hearsay.

The evidence on which the administrative hearing officer relied was a report containing hearsay and conclusions; the employee's attorney never stated an objection specifically based on hearsay.

A specific objection, with stated, articulated grounds, had in the past been generally thought to be required to be effective at the hearing or in a subsequent appeal. The employee's termination administrative hearing was governed by the California Government Code.[12]

> "*The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.*
>
> *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions…*".[13]

After much gnashing of teeth, the appellate court determined that the popular belief that an objection on hearsay is required, otherwise the hearsay can support a factual finding, runs counter to the plain meaning of section 11513, subdivision (c).

If a finding can be made on the basis of the record evidence, as supplemented and explained by the hearsay, the hearing officer need not decide whether the hearsay "*would be admissible over objection in civil actions*."[14]

And the objections previously required would be expected to be denied, because the section provides that any relevant hearsay "*shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs*…".[15]

The Court held that in disciplinary administrative proceedings, the burden of proving the charges rests on the municipality's administrative agency, which is the charging party.[16]

The Court held that the California Government Code says nothing about hearsay objections but where the hearsay is relevant and would be relied on by responsible persons, the statutory mandate that this hearsay evidence must be admitted conflicts with any requirement that an objection be placed on the record.[17]

The Court stated that the statute describes when hearsay will support a finding of fact. The Court held that § 11513 does not modify those conditions when "*there is some evidence, admissible in administrative proceedings, to the contrary*."

The plain meaning of the Code requires an analysis of "[t]he intent of the Legislature, [which] must be ascertained from the language of the enactment and where, as here, the language is clear, there can be no room for interpretation."[18]

In situations where § 11513 is in play, the function of hearsay as substantial evidence is delimited by the Code. Subdivision (c) declares that hearsay, unless admissible over objection in civil actions, "shall not be sufficient in itself to support a finding…".[19]

The Court pointedly reminded administrative agencies not to confuse admissibility and substantiality in the context of the Code. If evidence has insufficient probative value to sustain the proposition for which it is offered, the lack of an effective objection adds nothing to its value and it will not support a finding.

In a line of case following *Edison Co. v. Labor Board*, the courts considered statutes that provided, for administrative hearings, that the rules of evidence prevailing in courts of law and equity shall not be controlling.[20]

The court opined that, in these types of hearings, "… a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence."[21]

The Court rejected the agency's argument that the employee's "unexplained possession of [the item in issue] in itself comprises substantial evidence to uphold" the termination of the employee. The employee had testified that he did not know how the item ended up in his possession.

The hearing officer's disbelief of the employee's testimony was not sufficient as affirmative evidence to its contrary.[22]

The Court held that the employee's explanation could not be treated as untrue unless its falsity was established by circumstances other than the mere presence of the item. Without proof of the falsity of the employee's testimony, the fact that the item was in his room was not probative of the manner in which it got there.[23]

Hearsay, alone, could not prove the falsity of the employee's explanation because, if it were allowed such effect, the hearsay would not be merely "*supplementing or explaining other evidence*," as per § 11513 (c), but rather would confer probative value on an associated issue, namely, who gave the item to the employee. The effect of the hearsay would be to elevate the mere presence of the item in the employee's possession to the status of "*other evidence*" per § 11513 (c).

> The most significant mangling of the right to confront, in the context of the rule against hearsay, occurs in administrative tribunals.

This short-cut is not permitted. To allow it would mean that the critical finding (how the employee came to be in possession of the item) was supported only by hearsay. This is antithetical to the requirements of the § 11513 (c) and often grounds for reversal.

**Example 3** [24]

The California appellate court, in *Gananian v. Zolin*, followed the *Martin v. State Personnel Bd.* line of cases.[25] [26]

*Martin* held that an objection is not needed to prevent an administrative tribunal from relying on uncorroborated hearsay; lack of objection cannot turn hearsay evidence into competent evidence that can independently support a finding in § 11513(c) situations.

The Court ruled that an objection is not necessary to preserve the uncorroborated hearsay issue on review. The Court specifically rejected cases that had held to the contrary—the *Borror v. Department of Investment* line of cases, which hold that an objection must be made or it is waived.[27]

To qualify as an exception to the hearsay rule within the meaning of the California Evidence Code, personal observation is not required.[28]

Evidence is admissible under the Code if:

- The writing was made by and within the scope of duty of a public employee; and,
- The writing was made at or near the time of the event; and,
- The sources of information and the method and time of its preparation were such as to indicate its trustworthiness.[29]

Assuming satisfaction of the exception's other requirements, "*[t]he trustworthiness requirement...is established by a showing that the written report is based upon the observations of public employees who had a duty to observe the facts and report and record them correctly.*"[30]

In finding that an officer's observations may be incorporated into a subsequent officer's report, the Gananian court relied on *Taylor v. Centennial Bowl*, which found admissibility of these types of documents depends on whether the documents' contents are based on [the officer's] own observations, or the observations of other police officers, or public officials whose job it is to know the facts recorded; if so, but only if so, it is admissible.[31]

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[1] California Government Code § 11513(c).
[2] *Carroll v. Knickerbocker* (1916) 218 N.Y. 435, 440.
[3] *Consolidated Edison Co. v. NLRB* (1938) 305 US 197, 230.
[4] *Richardson v. Perales* (1971) 402 US 389.
[5] See *Brown v. Rock Creek Min. Co*., 996 F.2nd 812, 816 (6th Cir. 1993).
[6] *Sanders v. U.S. Postal Service*, 801 F.2nd 1328 (Fed. Cir. 1986).
[7] *School Board of Broward Cty., Fla. v. H.E.W.*, 525 F.2nd 900 (5th Cir. 1976).
[8] *TURN v. PUC*, A138701 (Feb. 5, 2014,) at p.2.
[9] *TURN* at 15-16.
[10] *Id.* at 17.
[11] *Id.* at 19.
[12] California Government Code § 11513(c) and (d).
[13] *Martin v. State Personnel Bd*. (1972) 26 Cal.App.3rd 573, 580 [fn. 3].
[14] California Government Code § 11513(c).
[15] *Id.*
[16] *Steen v. City of Los Angeles* (1948) 31 Cal.2nd 542, 547; *La Prade v. Department of Water & Power* (1945) 27 Cal.2nd 47, 51; *Sunseri v. Board of Medical Examiners* (1964) 224 Cal.App.2nd 309, 317; and *Johnston v. City of Daly City* (1958) 156 Cal. App.2nd 506, 515.
[17] California Government Code § 11513(c).
[18] *Caminetti v. Pac. Mutual L. Ins. Co*. (1943) 22 Cal.2nd 344, 353-354).
[19] *Kitchel v. Acree* (1963) 216 Cal.App.2nd 119,124.
[20] *Edison Co. v. Labor Board* (1938) 305 US 197.
[21] 305 US at 229-230; followed in *Walker v. City of San Gabriel* (1942) 20 Cal.2nd 879.
[22] *Pereyda v. State Personnel Board* (1971) 15 Cal.App.3rd 47, at 52-53; *Oldenburg v. Sears, Roebuck & Co*. (1957) 152 Cal.App.2nd 733, 742.
[23] *People v. McFarland* (1962) 58 Cal.2nd 748, 757; *People v. Golembiewski* (1938) 25 Cal.App.2nd 115, 117).
[24] *McNary v. Department of Motor Vehicles* (1996) 45 Cal.App.4th 688.
[25] *Gananian v. Zolin* (1995) 33 Cal.App.4th 634.
[26] *Martin v. State Personnel Bd.* (1972) 26 Cal.App.3rd 573.
[27] *Borror v. Department of Investment* (1971) 15 Cal.App.3rd 531.
[28] California Evidence Code § 1280.
[29] *Id.*
[30] *Gananian v. Zolin* (1995) 33 Cal.App.4th at 639-640.
[31] *Taylor v. Centennial Bowl* (1966) 65 Cal.2nd 114.

# Administrative Hearsay Decoded
## Test No. 159

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. An administrative hearing officer's primary role in an administrative tribunal is to determine relevant facts.
❑ True ❑ False

2. The administrative hearsay rule in administrative proceedings allows prevents hearing examiners from relying on unsupported hearsay evidence.
❑ True ❑ False

3. Facts offered via hearsay evidence in administrative hearings are mandatory and hearing officers must rely on them.
❑ True ❑ False

4. A statement that was made by a witness while testifying at the hearing that is offered to prove the truth of the matter stated is always hearsay evidence.
❑ True ❑ False

5. Hearsay testimony is testimony not within the witness' own knowledge; it is something the witness hears someone else say, and then offers in a hearing.
❑ True ❑ False

6. A document written by someone other than the witness can be hearsay evidence.
❑ True ❑ False

7. Hearsay evidence is generally not admissible in civil court, absent an exception, because the party against whom it is offered cannot cross examine the person who first made the statement or wrote the document.
❑ True ❑ False

8. The hearsay rule offends a Constitutionally guaranteed right to which parties are entitled: the right to confront witnesses against them.
❑ True ❑ False

9. Generally, in an administrative proceeding, hearsay evidence, uncorroborated by other evidence, is not sufficient to support a finding.
❑ True ❑ False

10. California Government Code §§ 11513(c)(d) address evidentiary rules in administrative tribunals.
❑ True ❑ False

11. Administrative hearings generally must be conducted according to technical rules relating to evidence and witnesses.
❑ True ❑ False

12. In many agency hearings, relevant evidence is usually admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
❑ True ❑ False

13. The critical analysis in administrative hearsay admissibility exactly mirrors objection in civil actions.
❑ True ❑ False

14. Hearsay evidence in many agency hearings may be used for the purpose of supplementing or explaining other evidence.
❑ True ❑ False

15. Hearsay evidence, alone, is not sufficient in itself to support a finding.
❑ True ❑ False

16. Supplementing or explaining other evidence means that a party is not proving material facts with the hearsay evidence alone.
❑ True ❑ False

17. In an administrative hearing, because there are not facts being proved or disproved by the offered administrative hearsay testimony or document, but merely explained, the hearing examiner may properly accept the evidence.
❑ True ❑ False

18. A hearsay declarants' motive to lie goes to the weight or credibility of the testimony.
❑ True ❑ False

19. A particular declarant's bias, which might be part of the overall testimonial picture, goes directly to admissibility.
❑ True ❑ False

20. A hearing examiner must consider all the relevant evidence admitted when deciding whether to rely on particular hearsay testimony.
❑ True ❑ False

## Administrative Hearsay Decoded
## MCLE Answer Sheet No. 159

**INSTRUCTIONS:**

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

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

**METHOD OF PAYMENT:**

❑ **Check or money order payable to "SFVBA"**
❑ **Please charge my credit card for**

**$**_____.

_____
**Credit Card Number**

_____ _____/____/_____
**CVV code** **Exp. Date**

_____
**Authorized Signature**

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

**Name** _____
**Law Firm/Organization** _____
_____
**Address** _____
**City** _____
**State/Zip** _____
**Email** _____
**Phone** _____
**State Bar No.** _____
**ANSWERS:**
**Mark your answers by checking the appropriate box. Each question only has one answer.**

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

By Michael D. White

# They're Here!:

## New California Laws, Effective January 1

Over the past year, the California legislature has shifted its focus away from COVID-19 measures to more traditional—perhaps, mundane—and diverse issues such as employee rest periods, firefighting, logistics, law enforcement, and fishing licenses.


SENATORIS EST CIVITATIS LIBERTATEM TUERI

AS THE IMPACT OF THE COVID-19 PANDEMIC has gradually waned over the past year, the California legislature has shifted its focus away from COVID-19 measures to more traditional—perhaps, mundane—and diverse matters such as employee rest periods, firefighting, logistics, law enforcement, and fishing licenses.

Bills that stalled in the legislature included proposals to create single-payer health care, ban corporate donations to political candidates, legalize psychedelic drugs, sanction clinics where addicts can use illegal drugs under medical supervision, and allow people to turn their bodies into garden compost after death.

**Employment, Safety and Wage Enforcement**

The minimum wage in California is increasing to $15.00 per hour on January 1, 2022, for employers with 26 or more employees based on previous legislation signed by then-Governor Jerry Brown in 2015. The minimum wage for employers with 25 or fewer employees will increase to $14.00 per hour on January 1, 2022.

• **SB973**, which passed in September 2020, created a new obligation for California employers to annually submit pay data report to the Department of Fair Employment and Housing (DFEH). California employers will need to comply with the March 31, 2022 deadline to report certain payroll data to the agency.

• **SB606** expands the enforcement authority of the California Division of Occupational Safety and Health (Cal/OSHA) by creating two new violations categories for which Cal/OSHA can issue citations—"enterprise-wide" violations and "egregious" violations.

This bill creates a rebuttable presumption that a violation committed by an employer with multiple worksites is "enterprise-wide" if the employer has a written policy or procedure that violates certain safety rules or Cal/OSHA has evidence of a pattern or practice.

Cal/OSHA may issue an enterprise-wide citation requiring abatement if the employer fails to rebut the presumption.

Enterprise-wide citations will carry the same penalties as citations for repeated or willful violations, up to $134,334 per violation.

Cal/OSHA also must issue a citation for an "egregious violation" if the division believes that an employer has willfully and egregiously violated an occupational safety or health standard, order, special order or regulation based on several factors listed in the statute.

The bill requires each instance of an employee exposed to that violation to be considered a separate violation for the issuance of fines and penalties.

• **SB572** deals with enforcement of wage liens against employers by adding a provision to the Labor Code allowing the California Labor Commissioner to create, as an alternative to a judgment lien, a lien on real property to secure amounts due to the Commissioner under any final citation, findings or decision.

• **SB62:** ushers in a variety of high-impact changes to labor laws covering the garment manufacturing industry and provides that garment manufacturing employees may not be paid by the piece or unit, or by the piece rate, but rather must be paid at an hourly rate. There is a limited exemption for employees covered by certain collective bargaining agreements.

Employees may enforce Section 2673.2 by filing a claim with the Labor Commissioner and the Labor Commissioner may bring an action to enforce the statute or issue a citation. The penalty for violations is $200 "per employee for each pay period in which each employee is paid by the piece rate."

In addition, SB62 broadens the scope of persons and companies liable for labor violations in the garment manufacturing industry.

Specifically, the law amends the California Labor Code to state that "a person contracting to have garments made" is liable for unpaid wages, including overtime and premium wages, and for reimbursements for expenses.[1]

The amended statute makes clear that this is the case "regardless of how many layers of contracting" exist.

Similarly, the law amends the California Labor Code to specify that brand guarantors—defined as "any person contracting for the performance of garment manufacturing… regardless of whether the person with whom they contract performs the manufacturing operations or hires contractors or subcontractors to perform the manufacturing operations"—must keep certain defined records regarding those contracts for four years."[2]

The law also amends the Labor Code to explicitly state that any garment manufacturer, contractor, or brand guarantor

**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.

who enters into contracts for garment manufacturing operations is jointly and severally liable for unpaid wages–including overtime and premium wages, reimbursement for expenses, other unpaid compensation, attorneys' fees, and civil penalties for failure to secure valid workers' compensation coverage.[3]

• **AB51:** In 2019, California passed Assembly Bill 51 to prohibit employers from requiring employees to sign agreements mandating arbitration of certain employment disputes as a condition of employment.

In 2020, a federal judge granted a preliminary injunction that prevented state officials from enforcing several sections of the bill. The judge found that the law was preempted by the Federal Arbitration Act (FAA).

The bill prohibits employers from requiring employees to sign arbitration agreements as a condition of employment.

Violations of the new law can be considered a misdemeanor offense, which potentially may result in civil sanctions for the employer.[4]

In October 2021, the U.S. Court of Appeals for the 9th Circuit overruled a lower court, and found that AB51 is not preempted by the Federal Arbitration Act, and struck down an injunction on enforcement of AB51.

However, the court did strike down a portion of AB51 that set criminal penalties for employers who violate the law.

Employers had claimed that the penalty provisions placed what they called "the extraordinary burden of criminal penalties punishable by imprisonment and fines."

• **AB73:** This new law requires that, in the event of a "wildfire smoke event," "agricultural workers" be given access to the stockpile of personal protective equipment (PPE) the state was required to develop under a pre-existing law.

AB73 accomplishes this by adding "wildfire smoke events" to the kinds of emergencies contemplated by the law, and by including "agricultural workers" in the law's definition of "essential workers."

The bill also requires that the Personal Protective Equipment Advisory Committee established by pre-existing law and made up of representatives from various industries, include among its ranks "*[o]ne representative of a labor organization that represents agricultural workers" and [o]ne representative of an organization that represents agricultural employers.*"

Finally, AB73 requires the California Division of Occupational Safety and Health to review and update the content of existing mandatory wildfire smoke training, and post the updated training to its website.

The law notes that employers will be required to provide the training "*in a language and manner readily understandable by employees, taking into account their ethnic and cultural backgrounds and educational levels, including the use of pictograms, as necessary.*"

• **AB331** was approved by the Governor on October 7, 2021, with provisions that apply to employment agreements—specifically severance agreements, settlements agreements, or a release of claims—entered into on or after January 1, 2022.

AB331, known as the "Silenced No More Act," amends Code of Civil Procedure Section 1001 and prohibits settlement agreements filed in "a civil action" or a complaint in "an administrative action" from preventing the disclosure of factual information related to the claim.

This applies to claims for sexual harassment, as well as workplace harassment, discrimination, or retaliation based on any other protected characteristic under California law.

AB331 also prohibits employers from requiring employees to sign a nondisparagement agreement or any other document that would restrict the employee's ability to disclose information about unlawful acts in the workplace.

The law also requires the following disclosure in an agreement that contains a non-disparagement provision or any other restriction on the employee's ability to disclose information related to workplace conditions: "*Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful.*"

In terms of separation/severance agreements, the new law requires employers to notify the employee that they have at least five days to consider the agreement and that they have a right to consult an attorney. The employee may sign the agreement prior to the expiration of this five-day period.

• **AB468:** This mandate provides written notice requirements for those who sell "emotional support dogs" or items related to emotional support animals.

Emotional support animals are defined as a dog or animal "*that provides emotional, cognitive or other similar support to an individual with a disability, and that does not need to be trained or certified*."

Specifically, AB468 requires sellers to apprise buyers of the fact that an emotional support dog/animal is not entitled to the rights and privileges of a guide, signal or service dog, and that misrepresenting oneself as the owner of a guide, signal or service dog is a misdemeanor.

Additionally, AB468 imposes criteria that must be met in order for a licensed health care practitioner as defined in California's Business and Professions Code to provide documentation "relating to an individual's need for an emotional support dog."

Specifically relevant for employers, AB468 expressly provides that it does not "*restrict or change existing federal and state law related to a person's rights for reasonable accommodation.*"

This bill adds Article 4 to Chapter 5 of Part 6 of Division 105 of the Health and Safety Code.

• **AB1003** makes the intentional theft of wages, benefits or compensation in the amount greater than $950 for one employee or more than $2,350 for two or more employees in a consecutive 12-month period punishable as grand theft under the California Penal Code, which prosecutors may charge as a misdemeanor or felony.

• **AB1033** passed in 2021 and takes effect on January 1, 2022, adds parents-in-law to the definition of "parent" for purposes of qualifying leave under the California Family Rights Act (CFRA).

As a reminder, effective January 1, 2021, SB1383 took effect that requires employers with 5 or more employees to comply with the CFRA. Employers with as few as five employees must provide up to 12 weeks of unpaid job protected leave during any 12-month period for certain covered reasons.

In addition, the definition of family members covered under the CFRA was expanded under SB1383 so that it no longer just includes a spouse, a parent or a child, but employees can take leave to care for grandparents, grandchildren, siblings, or domestic partners with a serious health condition.

Employers should review their CFRA policies to ensure compliance with these recent changes.

**Miscellaneous New Employment Laws**

• California employers are now required to provide certain information and forms to new hires. For example, California employers are required to provide non-exempt employees with certain information upon hire as required by the Wage Theft Protection Act.

The law became effective in 2012 and is codified in the California Labor Code.[5]

Many employers use the Labor Commissioner's template to meet their legal requirement, and will pre-populate the items in the form that do not change from employee to employee, lessening the information required to be completed on the form for each employee.

• Employers also need to review the base salary for all exempt employees to ensure the employees meet the salary required to be exempt.

To be exempt from the requirement of having to pay overtime to the employee, the employee must perform specified duties in a particular manner and be paid "*a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.*"[6]

**Industry-Specific Measures**

• **SB62** requires garment manufacturers and brand guarantors who contract with another person for the performance of garment manufacturing to be jointly and severally liable with manufacturers or contractors for wage violations of employees in the supply chain.

For the purposes of expanding the shared liability under this law, the bill expands the definition of garment manufacturing.

SB62 also prohibits the practice of piece-rate compensation for garment manufacturing, except in cases of worksites covered by a valid collective bargaining agreement. The bill imposes statutory damages of $200 per employee against a garment manufacturer or contractor, payable to the employee, for each pay period in which each employee is paid by piece rate.

• **AB73** expands on one of last year's Personal Protective Equipment (PPE) bills, SB275, which established a state stockpile of PPE in the event of a pandemic.

AB73 broadens the scope of the law to include wildfire smoke events as a health emergency under the law and includes agricultural workers in the definition of essential workers. The bill also requires Cal/OSHA to review and update wildfire smoke training, which employers must follow.

• **AB701** specifically targets warehouse distribution centers. The new law applies to certain larger employers meeting industry definitions for General Warehousing and Storage, Merchant Wholesalers of both durable and non-durable goods, and electronic shopping and mail-order houses.

The law requires covered employers to provide each nonexempt employee working at a warehouse distribution center a written description of each quota to which they are subject, including tasks to be performed, materials produced or handled, time periods and any potential adverse employment actions that may result from failure to meet quotas.

Under AB701, employees cannot be required to meet quotas that prevent compliance with meal or rest periods, use of bathroom facilities, or health and safety laws. If employees feel that quotas are interfering with these things, they can request a copy of applicable quotas and the last 90 days of their personal work speed performance, which the employer must produce within three weeks.

The law also creates a rebuttable presumption of retaliation if the employer takes adverse action against an employee within 90 days of the employee's request for their quota and personal work speed performance or an employee's complaint about a quota.

**COVID-19-Related**

• **SB336:** When the California Department of Public Health (CDPH) or a local health officer issues an order or mandatory COVID-19-related guidance, they must publish the order or guidance on their website along with the date that the order or guidance takes effect.

The CDPH or local health officer must also create an opportunity to sign up for an email distribution list to receive updates on the order or guidance. This measure will hopefully make it easier for businesses to track and implement the most current COVID-19 orders and guidance. SB336 also went into effect immediately upon signing.

• **AB654** clarifies and cleans up last year's COVID-19 notice and reporting bill, AB685.

The bill revises the language AB685 used to describe COVID-19 notice requirements to make it more consistent throughout. This was an urgency measure that took effect immediately upon signing.

**General Interest**

• **SB16** expands the public's access to police records—allowing them to view sustained findings in which an officer used unreasonable force, failed to intervene when another officer used excessive force, engaged in racist or biased behavior, or conducted unlawful arrests and searches.

• **SB98** would prevent police from blocking journalists covering protests and demonstrations. The bill ensures that reporters can be in protest areas without being arrested and prohibits police from "*intentionally assaulting, interfering with, or obstructing*" their newsgathering.

• **SB224** would mandate mental health instruction in middle schools and high schools that have an existing health education course. Supporters hope that such instruction would eventually be required in all schools statewide.

Content would cover a range of topics, including habits that promote mental wellness, signs and symptoms of common mental health conditions and ways to seek help.

• **SB331** would ban employers from using secret settlements to prevent workers from speaking out about all kinds of illegal harassment or discrimination, with some limited exceptions. The bill builds on a law passed in 2018, which limited the use of non-disclosure agreements to settle cases of sexual discrimination, harassment or assault.

Prior to SB331, any settlement agreement in a case where sexual harassment, sexual assault or discrimination based on sex has been alleged couldn't include a confidentiality provision prohibiting disclosure of information regarding the claim.

SB331 expands the prohibition to include acts of workplace harassment or discrimination based on any characteristic protected under the Fair Employment and Housing Act, not just those based on sex.

While employees cannot be prohibited from discussing underlying facts of the case, employers can still use clauses that prevent the disclosure of the amount paid to settle the claim.

SB331 applies to agreements entered on or after January 1, 2022.

• **SB510** would put a stop to "surprise billing" for COVID-19 tests and vaccinations, ensuring patients face no out-of-pocket fees from health plans and insurers during the public health emergency regardless of whether they receive their services through in- or out-of-network providers. The bill would also require insurers to fully cover COVID-19 screening tests—like those increasingly required on a regular basis by employers and schools.

• **AB26:** Law enforcement agencies must establish policies that require officers to immediately report when a co-worker has used excessive force and prohibits retaliation against officers who disclose violations. The law also mandates that officers who don't intervene when excessive force is used be disciplined.

• **AB481:** Law enforcement agencies are required to obtain approval from their local governments before purchasing surplus military equipment such as armored vehicles or large-caliber firearms. Governing bodies also are required to establish a policy that determines the quantity, type, use, and training requirements.

• **AB1171:** Requires the reporting of any felony convictions and exempts only misdemeanor convictions from the requirement that certain employers notify parents or guardians that an employee with specified convictions will have supervision over a child.

• **AB1405** enacts the Fair Debt Settlement Practices Act. The bill would define a debt settlement provider as "*a person who, for compensation and on behalf of a consumer, provides debt settlement services, as defined*."

The bill would define a payment processor as a person who provides payment processing services, as defined.

Among other provisions, the bill prohibits a debt settlement provider from engaging in false, deceptive, or misleading acts or practices, as specified, when providing debt settlement services.

The bill also requires a debt settlement provider to provide a consumer with certain disclosures along with an unsigned copy of the proposed written contract between the debt settlement provider and the consumer, and would prescribe requirements for the contents of these contracts.

It also authorizes consumers to bring a civil actions for violation of any of the bill's provisions.

**Other Legislation Taking Effect**

• **SB81:** Restricts sentence enhancements for a number of crimes.

• **SB332:** Establishes new legal liability standards for certified burn bosses when prescribed burns escape containment lines. Burn bosses will not be held liable if a fire gets away as long as they weren't "grossly negligent."

• **SB343:** A 'truth-in-law' that restricts what kinds of plastic packaging can tout the triangular symbol known as 'chasing arrows' under the state's truth-in-advertising law.

• **SB389:** Allows restaurants to continue selling to-go cocktails, using parking lots for expanded seating, and serving alcohol in parklets through December 31, 2026.

• **SB470:** Offers year-round fishing licenses.

• **SB487:** Allows for smaller apartment complexes by easing the limits on a housing development's square footage based on its lot size.

• **SB742:** Makes it illegal to harass people entering vaccination clinics.

• **AB48:** Protects protesters from rubber bullets.

• **AB550:** Gives cities more authority to reduce their speed limits.

• **AB825:** Modifies existing data security breach notifications to include genetic data under personal information.

• **AB928:** Eases transfers by California community college students to University of California and California State Universities.

• **AB1346:** Bans the sale of new gas-powered leaf blowers, lawn mowers and other small off-road engines by as soon as 2024.

• **AB1427:** Cracks down on sideshows and illegal street racing by allowing courts to suspend convicted motorists' licenses for up to six months.

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[1] California Labor Code § 2670.
[2] *Id.* §§ 2671 and 2673.
[3] *Id.* § 2673.1.
[4] California Government Code §§ 12900 et seq.
[5] California Labor Code § 2810.5.
[6] *Id.* § 515, subd. (a).

**SPAM...SPAM...SPAM...SPAM:** Additionally, according to the latest *2021 Global Spam Report*, there are more than 294 million smartphone users in the U.S. with each receiving 4.8 spam calls per month.

Interestingly, the Report found that higher spam call volumes were reported in October 2021 than earlier in the year, pointing to spammers becoming more sophisticated over time.

Americans receive approximately 1.4 billion spam calls per month, based on the number of smartphone users and average number of spam calls users receive daily.

The U.S. dropped in the ranking of most spammed countries from 2nd in 2020 to 20th in 2021, largely due to the increase of spam call volumes in other countries, the Report found.

**NEW LAW SCHOOL FIGURES:** There is an 11.8 percent increase in first-year law students for the 2021 admissions cycle, compared to 2020, according to data released recently by the ABA's Section of Legal Education and Admissions to the Bar.

The data is from Standard 509 Information Reports that the section collects from law schools, according to a website summary. In total, 42,718 students started their first year of law school during the fall 2021 term, compared to 38,202 in 2020. Total JD enrollment for the fall 2021 term is 117,501; it was 114,520 in 2020.

Out of the 196 ABA-accredited law schools, 153 reported class size increases or no change from the previous year. Also, 43 law schools reported having smaller 1L classes for the 2021 admissions cycle.

Additionally, the data showed a 1.2 percent decrease in students enrolled in LLM, masters and certificate programs.

**TALENT WAR:** Law firms will be able to easily absorb higher expenses driven by a talent war because of strong revenue growth in 2021, according to the new *2022 Citi Hildebrandt Client Advisory*.

Average revenue growth for the first nine months of the year is expected to be 14.7 percent higher than the same period of 2020, according to the report.

"2021 has unmistakably been a year of strong growth for all segments of the industry," the report said. "We expect to see some of the strongest net income and profit per equity partner (PPEP) results on record."

Demand was up 6.6 percent, rates increased 6.5 percent and the collection cycle shortened by 2.1 percent. The growth in demand was driven largely by work in mergers and acquisitions, finance and capital markets and litigation activity.

"In this strong demand growth environment, there are not enough lawyers to handle the rising tide of work, with total lawyer head count growing just 0.7 percent," the report said.

**LAW SCHOOL ADMISSIONS:** In a closed session, the council of the ABA's Section of Legal Education and Admissions to the Bar recently voted in favor of allowing law schools to accept Graduate Record Examination scores from applicants in place of Law School Admission Test scores. The change is effective immediately.

According to a news release, the topic falls under Standard 503, which requires that law schools use a "valid and reliable" admission test to assess applicants' capabilities of completing law school. Before the council's November decision, schools had to demonstrate that entrance exams other than the LSAT were valid and reliable, including the GRE.

Previously, at the 2018 ABA Annual Meeting, the council submitted a proposed resolution to the House of Delegates that called for cutting Standard 503 and adding more language to Standard 501, which requires law schools adhere to sound admission policies and practices.

The proposed revision was supported by many law school deans who wanted to accept the GRE but received criticism from various groups, including the Minority Network, a group of law school admissions professionals. The council withdrew the proposed revision shortly before the scheduled House of Delegates' vote.

**BABY BAR SUCCESS:** Reality TV star Kim Kardashian has passed the "baby bar" exam required for would-be California lawyers who opt to learn the law through apprenticeship instead of law school.

Kardiashian said in a recent Instgram post that she had passed the exam on the fourth try, according to several media sources.

"I failed this exam 3 times in 2 years, but I got back up each time and studied harder and tried again until I did it!!!" Kardashian said in her Instagram post.

Kardashian's late father, Robert Kardashian, was a member of the defense team that successfully defended O.J. Simpson on murder charges.

The baby bar exam is officially known as the First-Year Law Students' Examination, according to Law.com. Those who must pass the exam include those who are "reading the law" such as Kardashian, and those who attend law schools that are not accredited by the ABA or the state bar.

The exam is "notoriously difficult" to pass, says Law.com. Only 21 percent of all test-takers passed the November 2020 and June 2021 exams, for example. Kardashian passed the Oct. 26 exam, according to the Reuters news agency. She will still have to continue her studies and take a second bar exam.

Usually, those taking the baby bar exam get only three times to pass, but California added an extra try because of the COVID-19 pandemic.

By Sarah Bottorff

# Why People Aren't Hiring Lawyers Anymore:

## What You Can do to Convince Them Otherwise

RECENT INSIGHTS SHOW THAT legal issues exist all over the planet. Although the severity of legal issues varies depending on where you are, the most frequent legal problems are related to money, housing, and debt.

A recent study conducted by The World Justice Project concluded that as many as one out of four people say that their legal issues were so bad that they resulted in physical or mental distress, and one out of five people reported that they lost their jobs or homes as a result of their legal problems.[1]

Of those surveyed in the USA, over 50 percent claim to have experienced a legal issue within the last two years. In other words, it's safe to say that people need lawyers!

Yet, despite the obvious need for legal counsel, in 2018, 77 percent of people with a legal issue in the US didn't get a lawyer. People are simply not using lawyers.

The question is: Why?

### People Think Lawyers are Overpriced

The bottom line is that most Americans don't have the budget to be able to afford a lawyer. After all, depending on their experience, some lawyers can cost over $500 an hour.

Even simple cases can cost several thousands of dollars in legal fees, and more complex cases can cost upwards of the price of a small island.

Because of lawyers' reputations for being extremely pricey, many people automatically assume that hiring a lawyer falls way outside of their budget, and they don't give it a second thought.

For this reason, many attorneys are starting to move towards a flat fee

**Sarah Bottorff** is the Head of Growth at Lawmatics, a San Diego-based designer developer of software and programs to assist attorneys with data analytics, CRM, document automation and other to streamline their practices. She can be reached at mail@lawmatics.com.

system. Flat fee billing systems are easy for clients to understand, and perceived by legal clients as less risky and more affordable.

A lot of lawyers hesitate to gravitate towards a flat fee pricing system because they fear that they may cut themselves short for the amount of work that they put in. However, statistics are showing that flat-fee pricing is the future of law firms, and offering this form of legal pricing will help you win way more clients.

One of the biggest reasons why lawyers cost so much is because a lot of what lawyers do is extremely time-consuming.

From sitting through consultations with clients to developing and implementing legal strategies to drafting up complex legal documents to revising them, to attending court dates and negotiating with opposing legal parties—it's no secret that a career in law is one of the most demanding careers out there.

Time equals money, *especially* for lawyers. So, when you add all of these time-consuming and laborious elements of being a lawyer on top of the administrative work that it takes to run and market a law firm—not to mention the price paid for law school, it's only natural that lawyers come with hefty price tags.

Lawyers put in a lot of work, and their high prices are often merited. So while lowering the cost of your legal fees may not be realistic, lowering the amount of *time* you spend on each case is. Increasing your efficiency doesn't just have your clients' best interest in mind but also yours.

Streamlining your workflow, and being as efficient as possible means that you can take on even more legal clients. The answer to becoming more efficient lies in leveraging technology.

Lawyers aren't as productive as they would like to be, largely because of all of the interruptions. A recent survey by *Law.com* revealed that legal professionals experience more than ten interruptions a day. Between incoming phone calls, emails from prospects, and client no-shows, there are all sorts of things that can throw a monkey wrench in your process.[2]

On average, lawyers spend only 29% of each day on work they can actually bill for. That means only about two hours of each workday is spent on billable work. As more and more lawyers start to catch on to how much valuable time they're losing the more are starting to gravitate towards legal software.

In the absence of legal software, juggling incoming inquiries can be a nightmare, particularly if you don't have the luxury of front desk staff. If you're in the middle of a consultation and someone calls to inquire about your legal services, the call will go to a voicemail box that may or may not ever get listened to.

If someone does answer the phone, they may write down their information on a piece of paper and stick it on a desk somewhere, which may or may not make its way back to you to be followed up with. In many cases, there's so much going on already, that no one ends up getting back to that person. The end result is an opportunity lost.

Relying on software like a law firm CRM and legal client intake software puts your firm on autopilot so that you never have to step away from a paying client to handle an interruption again.

### People Think Lawyers Lack Transparency

Market research shows that lawyers have extremely bad reputations for a lack of fee transparency. Because of the fear of an astronomical final bill handed over to them, many people with legal problems avoid getting an attorney altogether.[3]

Recently, a legal marketing research firm conducted interviews concluding that clients feel "attorneys have very little empathy for their situation." The lack of trust between consumers and lawyers is a big problem for the legal industry.

Because clients aren't sure how

lawyers will bill them, they worry that the final fee won't be in their favor. The worry of the lack of control over the final cost leads to anxiety to the point that they avoid working with lawyers altogether.[4]

So, how do lawyers overcome this common sense of dread that people seem to have about them? It all comes down to an open and transparent pricing system that you go over from the very first consultation. If you can provide a clear breakdown of your pricing system from the very first meeting, then you're much more likely to gain their trust.

It's as simple as assembling a document using legal document automation software to create an attorney-client agreement before the end of your first consultation.

Custom fields allow you to merge whatever data from your matters and contacts and auto-fill directly into a contract with a few clicks of a mouse. By having the fee laid out on the table from the very beginning, you'll win your client's trust, and eliminate the need for anxiety surrounding the final bill.

**People Have Access to Free Legal Advice Online**

Legal self-help websites such as NOLO, provide an extensive collection of legal information all for free. People are able to turn towards resources like these to find answers to their everyday legal questions in easy-to-understand terms.

However, as any lawyer knows, legal self-help is not the same as legal representation and does not substitute expertise in the law.

Yet when a consumer considers the free alternative to paying hefty fees to a lawyer, it's understandable why they may choose to navigate their legal woes on their own. Lawyers looking to convince legal DIY'ers should explain to them why they're the best person for the job over a self-help company. Your word alone isn't enough. It's helpful to produce plenty of examples of similar cases that you've won, and how you can help their particular case.

Tools like audience segmentation software can help group your leads into distinctive categories, which allow you to send drip campaigns for law firms personalized for their situation. If you have leads who are leaning towards legal self-help over hiring a lawyer, then group them into a category that targets their particular situation. Highlight your strengths, and your experience working on their types of cases. Provide resources and information, and show them that you're passionate about that particular area of law.

Ultimately, a personalized approach to their legal problem is much more valuable than anything they'll find in an online library.

**Bad Experiences With Lawyers in The Past**

Many people have hired a lawyer at some point in their lives, and it was an overall negative experience.

While many bad legal experiences come down to a general lack of compassion and transparency, in most cases people's main complaints about lawyers were their lack of efficiency and poor communication.

The general consensus is that legal clients feel lawyers show less attention towards their case than they would like. The bottom line is that people expect to be kept up to date on the status of their case and responded to quickly when they contact their lawyer.

From a lawyer's perspective, it's easy to understand why it may be challenging to give their clients the undivided attention that they'd like. After all, lawyers are overwhelmingly occupied with everything it takes to run a law firm. Yet there are some lawyers out there that clients are thrilled with who have just as much on their plate as the lawyers with dissatisfied clients. So, what is their secret to giving their clients outstanding service that makes them want to work with them again?

The answer may not be what you think.

Surprisingly, it has nothing to do with winning their case or not. Believe it or not, there are plenty of lawyers out there who don't get the best possible results for their client's case, yet the clients are thrilled with them.

It all comes down to the client journey.

We live in a consumer-driven market, and clients appreciate great service. If you can manage to make your legal clients feel connected to you every step of the way, even in the absence of a favorable outcome for their case, you will delight and retain them.[5] [6]

Since you can't exactly multiply yourself to be in 500 places at the same time, the next best thing is relying on automation software. Workflow automation for law firms keeps your clients connected to you every step of the client journey, making them feel like they are your *only* client.

Whether they sign up for your newsletter or schedule a meeting, legal client intake software allows you to set up trigger-based emails that make them feel connected to you at every turn.[7]

**In 2021 Law is a Buyer's Market**

Once upon a time, lawyers held all the cards. Clients had no other choice but to accept the way that firms were run, and like it or not it was a one-sided dynamic. However, the competition is fiercer than ever. People expect a high level of service for the least amount of effort possible. If you can't offer a client-centric and efficient experience, then people are going to go where they can find it.

We live in the age of instant gratification. People can order just about anything online and have it delivered the same day. If you can't meet the demands of the modern consumer then you won't stand up against the competition. There are 1.3 million lawyers in the U.S. alone, so, if you can't provide what people are looking for, then they're going to find someone that can.

The internet has given people unprecedented access to legal services, where they can easily read reviews helping them determine who the best fit for their case is. Standing out to legal clients in a sea of online competition means you need to find a way to attract them, because, in 2021, law is a buyer's market.

**How to Build a Strong Reputation and Get Hired**

Now is the time to commit to delivering an outstanding client experience and shining in a sea of competition. Today, we live in a star-rated society, so, if you can manage to prioritize your law firm's online ratings, then you'll already win half the battle.

Statistics show that 90 percent of consumers base their buying decisions on reviews. Whether they're looking for a place to buy jeans, or someone to represent them in a family law case, people trust online reviews as much as they would a recommendation from a close friend.[8]

Remember, getting a great review doesn't *always* stem from winning your client's case either. It all comes down to the client experience.

**Reply Right Away**

We live in an age where we expect immediate communication. Where everyone has mobile phones, and you can reach someone right away instead of having to wait until they're next to their landline. We live in an age where we can send emails that get delivered immediately rather than having to put a stamp on an envelope and drop it off at the post office.

People are less willing than ever to have to wait for a response when they call your law firm. 80 percent of legal clients expect an immediate reply when calling a law office to inquire about services.

Unless you have the luxury of front desk staff, answering the phone isn't always possible as a lawyer. So, to meet the demands of today's consumer market, you have to find a way to deliver an immediate response even when you're busy serving your paying clients.

The answer lies in automatic follow-ups. A legal client intake software and legal CRM system can send automatic follow-ups that make your clients feel valued from day one. Automated personalized messages will delight and engage, and above all, impress potential clients with your modern and speedy approach to handling inquiries.

Whether someone signs up for a newsletter on your website or schedules a consultation, they'll receive a personalized message with the attention they expect and deserve.

**A Friendly Attitude Goes a Long Way**

Lawyers don't have the luxury of being dismissive or cold in today's consumer-driven market. People want a helpful and friendly response that answers all their questions.

Lawyers with too much on their plates trying to keep up with the demands of each incoming inquiry may send cold or brief responses that lack answers to all the prospects' questions. But, first impressions matter, so the minute that a client first contacts your firm, you should be prepared to deliver a great response.

Legal software starts tracking a lead the minute they first contact your firm. That way, you know what steps need to be taken to ensure that you've answered all their questions. It's also important to make sure that you ask them questions such as, why they need a lawyer, and whether they've hired a lawyer before.

Asking important questions upfront before scheduling a consultation can save everyone time. Not everyone is going to be the right fit for your law firm. So, determining that early on can help avoid losing time on a consultation.

**Deliver an Error-Free Experience**

Without a systematic client intake

process, lawyers risk plenty of errors. Whether it's an error in the contract or a scheduling problem, clients have a low tolerance for mistakes.

After all, these people are hiring a lawyer to fix their problems, not create more problems. Avoid errors by relying on tools like automation in law firms that assemble important paperwork quickly and error-free.

You can easily merge the data you need from your matters and contacts, and fill it directly into your PDF and word documents with a few clicks of a mouse. Not only can you ensure 100% accuracy, but you can also gain valuable time.[9]

**Be Consistent**

Consistency is a fundamental part of delivering quality customer service. If you want to deliver a superior client experience that encourages people to recommend you to their friends and family and hire you again, then you need to consistently deliver and exceed their expectations.

Recent findings conclude that 86 percent of consumers stop doing business with someone due to one bad experience.

Client relationships are no different from personal ones, when you can provide consistent results, you build trust and strengthen your relationships because they're built on a foundation of trust. Since clients are putting their most important legal matters into your hands, it's critical that they can rely on you to deliver what you promise every single time.[10]

Part of delivering a consistent client experience is ensuring that everyone in your law firm is on the same page. Asking your clients the same questions each time that they talk to someone different at your law firm will quickly frustrate them.

Relying on a CRM means that all of the most important information about your clients will be meticulously tracked and saved in one single database. That way you can deliver a smooth and consistent client experience instead of a chaotic one.

**Make it Easy**

The most important thing to most consumers is a service that is as effortless as possible. Let's face it, when you're paying someone to deliver a service, then you want the least amount of responsibility possible.

Make things easy for your legal clients by giving them less work to do. That means offering services like a client e-signature tool so they can sign important documents from wherever they are without having to bother with a scanner or fax machine.

Offering automated appointment scheduling is also a fantastic way to take the annoyance out of trying to find a time that works for everyone in lengthy back-and-forth emails.

In short, the more effortless of a client experience you can provide your clients, the more thrilled they'll be with your law firm and the more inclined they'll be to leave you a stellar review.

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[1] Global Insights on Access to Justice 2019 | World Justice Project (*worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019*).
[2] What Do Lawyers Really Do With Their Time (*https://www.law.com/sites/almstaff/2017/09/26/what-do-lawyers-really-do-with-their-time/*).
[3] Research Shows Lack of Transparency is a Top Concern for Law Firm Clients (*www.crossroadlegal.com/research-shows-lack-of-transparency-is-a-top-concern-for-law-firm-clients*).
[4] Lack of transparency over costs "driving consumer mistrust" of lawyers (*www.legalfutures.co.uk/latest-news/lack-transparency-costs-driving-consumer-mistrust-lawyers*).
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[9] Client Intake 101: Guide for Law Firms (blog.lawmatics.com/ultimate-guide-for-law-firms).
[10] Customers Want Consistency Each and Every Time (*www.successwithcrm.com/blog/bid/94610/Customers-Want-Consistency-Each-and-Every-Time*).

# BLANKET THE HOMELESS

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

San Fernando Valley Bar Association
*founded in 1926*

Since 1995, the SFVBA has delivered more than **50,000 blankets** to homeless and battered women shelters in the San Fernando Valley. SFVBA members are invited to assist with donations. With your support, numerous organizations that deliver much-needed assistance to the Valley's homeless, such as MEND, North Valley Caring, Bridge to Home, Loaves & Fishes, Haven Hills, and LA Family Housing, will receive hundreds of much-needed blankets.

MEND · L.A. FAMILY HOUSING · NVCS · haven hills · Bridge To Home · Loaves&Fishes

Due to COVID-19 restrictions, blanket distributions will be coordinated directly with each partner organization.

## Thank you for supporting Blanket the Homeless!

**A $75 donation buys 10 blankets. Please accept my donation for $_____.**

Name_____

Firm/Company_____

Address _____

Phone _____ Email _____

Credit Card No. _____ CVV code _____

Expiration Date _____ Signature _____

Make checks payable to VCLF of the SFVBA. The Valley Community Legal Foundation (VCLF) of the SFVBA is a registered 501(c)(3) organization (Tax ID No. 95-3397334). Your contribution is tax-deductible to the extent allowed by law.
Mail donation to VCLF, 20750 Ventura Blvd., Suite 140, Woodland Hills, CA 91364.
Online donations can be made at http://thevclf.org/blanket-the-homeless-fund.
For more information, please call (818) 227-0490.

**Thank you** AAA DIRECT MAIL *With the Personal Touch!* **for the generous donation of your time.**


By Michael D. White

# Common Benefits, Common Goals:

## SFVBA's Partner Organizations and Programs

OVER A HISTORY THAT spans almost a full century, the San Fernando Valley Bar Association has developed strong ties to other important law-related and community service organizations, as well as helped craft programs that have had a marked positive impact on the community.

The result is a healthy network of lawyers and dedicated volunteers ready to serve the needs and interests of the Valley's legal professionals and their community.

Through its programs and network of partner organizations, the SFVBA offers its members terrific opportunities to expand their professional ties, grow their practice, and volunteer their talents in meaningful service to the San Fernando Valley community and the Southern California region.

Just one example, in the midst of the COVID-19 pandemic, the SFVBA's Women Lawyers Section responded to what the United Nations called the "shadow pandemic" of domestic abuse with a unique and important volunteer opportunity.

Taking proactive action, the Bar's Women Lawyers Section worked with Canoga Park-based shelter Haven Hills to provide shelter and safety to those suffering abuse at home.

"While back to school looks very different for all of us this year, it is a particularly difficult time for Haven Hills' residents. This is why the Women Lawyers Section is reaching out to our members who may be interested in lending a hand," said SFVBA Trustee Amanda Moghaddam at the time.

The Section, she said, worked with Haven Hills to "adopt" a family at the shelter, determine its needs and meet them, whatever they may be—from Christmas gift cards and clothing to toiletries or school supplies.

The strong partnerships the SFVBA enjoys with the Santa Clarita Valley Bar Association, the Attorney Referral Service, the Valley Community Legal Foundation, and the Mediation Center of Los Angeles, as well as the Valley Bar Network, Blanket the Homeless and other programs add value to membership and can enhance a law practice.

Thanks to these partnerships, SFVBA members are able to meet new and diverse attorneys, join a trusted referral service, and discover new ways to give back to their community.

**Santa Clarita Valley Bar Association**

For many years, the SFVBA and Santa Clarita Valley Bar Association (SCVBA) have maintained a strong partnership, providing a path for networking and collegial solidarity among attorneys who practice or live quite a distance from the city's center.

"The Santa Clarita Valley Bar Association is thankful and proud to have the San Fernando Valley Bar

Association as a sister organization," says Taylor F. Williams-Moniz, SCVBA immediate past President. "The two organizations have worked together to provide for their membership, as well as their communities and we are looking forward to more in person events so that the two bar associations can continue to assist one another in the future."

Leading the SCV Bar Association thru 2022 are Jeffrey Armendariz, President; Corey Carter, Secretary; Robert Castillo, Treasurer; and Barry Edzant, Cody Patterson, John Noland, and Christine Inglis as Members-at-Large.

The newly appointed board was sworn-in by Honorable Eric C. Taylor, Presiding Judge of the Los Angeles Superior Court. San Fernando Valley Bar Association President, Christopher Warne, serves as the SFVBA liaison.

On November 17, 2021, the Santa Clarita Valley Bar Association hosted its annual Awards & Installation Gala at the Oaks Club, overlooking the Santa Clarita Valley.

Following tradition, guests brought unwrapped toys that were delivered to the Santa Clarita Service Center just in time to bring some cheer to families in need for the holidays.

Attorney Referral Service
San Fernando Valley Bar Association

**Attorney Referral Service**

The SFVBA's closest partnership is with the Attorney Referral Service (ARS). The ARS was established in 1948 and is one of the longest-running referral services certified by the State Bar of California.

Operated and overseen by the SFVBA and its Board of Trustees, the ARS maintains its own staff, a 10-member advisory committee, and budget. It was founded to help connect the public with experienced and qualified attorneys and currently meets the legal needs of Valley residents through a panel of more than 150 panel attorneys.

The ARS falls under the umbrella mission statement of the SFVBA, which serves as its sponsor organization.

One of the handful of referral services in California certified to operate by the State Bar, the Service is dedicated to three fundamentals—to educate its attorney members and the public concerning the law, the legal profession, and the judicial system; to promote the growth of the legal profession; and to promote meaningful access to legal representation and the justice system for all persons regardless of their economic or social conditions.

The ARS also has outlined clear objectives, some of which are regulatory and help ensure its proper certification. These objectives include having a governing committee, an active panel of attorneys to provide legal services, and staff to evaluate and process public requests for legal assistance.

It must also provide referrals after taking into consideration various factors, including the type and complexity of the legal problem presented, and the client's financial circumstances, spoken language, and geographical location. The ARS also aims to provide legal and general information and referrals to consumer, government, and other agencies as needed by the individual caller.

As a service to the community, it also operates the Senior Citizens Legal Services Program through local senior centers to meet the needs of the Valley's elderly clients. It also provides a Modest Means Program for low-income clients and a Limited Scope Representation Program for certain family law cases.

The daily operations of the ARS are handled by Miguel Villatoro, a tri-lingual—English, Spanish and Portuguese—paralegal, who connects the public with attorneys best qualified to meet their legal needs and provide information and educational materials at local community centers and events.

The Service is owned and operated by the SFVBA with the Bar's Board of Trustees routinely kept informed regarding its daily operations and finances.

VCLF
Valley Community Legal Foundation

**Valley Community Legal Foundation**

The Valley Community Legal Foundation (VCLF) was formed in 1979 as the SFVBA's charitable arm.

The Foundation is an independent 501(c)(3) charitable organization with a four-pronged mission to support law-related programs that assist children, families, domestic violence victims and those in need; enhance community access to the courts; provide educational opportunities and scholarships to students who

demonstrate an interest in law-related careers; and recognize and honor the achievements of law enforcement and firefighters.

The tremendous work of the VCLF is carried out by a group of dedicated volunteers and, operated without a paid staff to reduce administrative expenses, can direct the maximum amount of its resources to its charitable goals.

The Foundation's current president is attorney Joy Kraft Miles, a member of the SFVBA Board of Trustees, who leads the VCLF's Board of Directors, made up of active and retired attorneys, judges, and community members.

Over its 36 years of community service, the VCLF has generously supported such important community organizations and programs as Comfort for Court Kids, Haven Hills, Blanket the Homeless, and the Northridge Hospital's Center for Assault Treatment Services.

The organization also funded the Children's Waiting Rooms in the Van Nuys and San Fernando courthouses. Those spaces provide safe havens for children whose parents are engaged in court disputes.

In addition, the VCLF has cooperated with several local law schools in organizing a highly regarded Mock Trial program and has drawn significant praise for its *Constitution & Me* presentation, which is staged at several Valley high schools in the spring and is designed to engage students in conversations about the Constitution and develop a greater understanding of how it impacts their daily lives.

The program also stands to develop their reading, analytical, and interpersonal skills by demonstrating active listening and cooperating with others to solve problems.

Additionally, the program creates an opportunity for the students to interact with positive adult role models from the legal community and increase their awareness of the role of the courts and our legal system in adjudicating disputes.

Limited in the immediate past because of COVID-19 mandates, the VCLF will relaunch its *Constitution & Me* program at several Valley high schools in the spring of 2022.

**Valley Bar Network**

The Valley Bar Network's mission is "to enhance SFVBA membership with a dedicated, consistent networking program so as to promote new and ongoing professional relationships, and to facilitate collaboration and reciprocal business referrals."

In 2016, then-SFVBA President Alan Kassan expressed the need to enhance member benefits by filling the gap between the Bar's smaller section meetings and its larger conference and gala-type events.

Heading the Bar at the time was Carol Newman, who agreed and enthusiastically supported the creation of what has become one of the Bar's most successful professional outreach programs, the Valley Bar Network.

The original target, says Kassan, was to recruit a dozen members to get the word out and seed the new group, but, to Kassan's surprise, more than double that number responded.

Pre-COVID, the VBN draws as many as 60 dues-paying members to its monthly meeting at its regular venue–a popular restaurant near the Bar Association's offices in Tarzana.

The group, he said, "combines both an opportunity to network and information in an informal social environment. People feel comfortable knowing that serious business is getting done, while, at the same time, they can enjoy themselves."

Taking it all a step further, he adds, breakout groups of three or four members who meet for breakfast or lunch between regularly scheduled networking get-togethers are drawing increased participation.

Not to be deterred by the ongoing pandemic, the VBN has meet 'virtually' through the past year with plans to return to its face-to-face meetings as soon as possible.

**Mediation Center of Los Angeles**

The Mediation Center of Los Angeles (MCLA) was formed as a 501(c)(3) non-profit organization in 2013 in collaboration with and support from the San Fernando Valley Bar Association.

Initially known as the Valley Bar Mediation Center, the purpose of the Center "was to provide low-cost quality mediations with a panel of experienced mediators in an attempt to replace the

Los Angeles Superior Court's ADR program which had terminated," says attorney Myer Sankary, the founder, president and program director of the MCLA.

In 2018, the Los Angeles Superior Court requested bids to provide low-cost mediations with only lawyer-mediators. The MCLA was awarded 2 contracts—one for in-person and the other for online mediations.

"The MCLA offered online mediations before the COVID pandemic and we started training to use Zoom for mediations," says Sankary, who has worked with the Center on a pro bono basis since it was founded. "With the onset of the pandemic, more cases were assigned to mediation and the MCLA saw an increase in inquiries and cases with over 500 inquiries and over 100 cases mediated this year."

"We still have close relations with the SFVBA," he says. "Three past presidents are members of MCLA's board and we hope to have more activities with the SFVBA in the future."

NLSLA

Neighborhood Legal Services of Los Angeles County

**Neighborhood Legal Services – Los Angeles**

The SFVBA and Neighborhhod Legal Services-Los Angeles have worked together for several years to promote and encourage ready access to legal help among the region's most needy communities.

Currently, SFVBA Trustee Minyong Lee serves as liaison between the Association and the NLSLA.

The following story speaks for itself as to the dedicated work of the the NLSLA and its positive impact on the community.

*"Susana Ramis needs constant care. The 57-year-old has for decades suffered from debilitating anxiety, depression and panic attacks that have kept her from engaging with the outside world and made it impossible to perform routine tasks.*

*"Susana's disabilities have long limited her ability to work, and she has relied on the federal Section 8 Voucher rent subsidy program for 20 years to avoid homelessness. During that time, her son Noel has helped take care of her, monitoring her treatment and medication, providing support during panic attacks, and performing the countless daily tasks required to keep her healthy.*

*"Noel is now in his 30s and pursuing a Master's degree. But for being his mother's caregiver, he would have moved out and lived on his own years ago. When he graduates, the job he would get would almost certainly push Susana over the income limit for Section 8, meaning she would lose her rent subsidy unless he moved out.*

*"Susana's medical providers have made it clear she cannot live on her own, and have identified Noel as the only logical candidate to be her live-in aide. So Susana requested to have Noel approved as her live-in aide, as allowed by federal law.*

*"But the Housing Authority of the City of Los Angeles (HACLA), citing an arbitrary policy prohibiting current household members from becoming live-in aides, repeatedly denied her request without considering her individual circumstances.*

*"Despite Susana's healthcare providers identifying her son as the best choice for a live-in aide, the housing authority effectively barred him from that role," said NLSLA attorney Ana Zuniga. "As these cases started to mount, we realized the housing authority was making healthcare decisions for their participants, without looking at the circumstances of each case. They were simply rejecting every single request."*

*"After seeing several other tenants in similar situations, NLSLA felt it had no choice but to sue the agency to force it to make reasonable accommodations on a case-by-case basis. Now, two years after the lawsuit was filed, a judge has ordered the housing authority to do just that.*

*"Each reasonable accommodation request—based on a Section 8 recipient's disability—must be considered on its merits based on the unique circumstances," ruled Los Angeles Superior Court Judge Mitchell Beckloff.*

*"He found HACLA's policy of automatically denying these requests violated regulations set by the Department of Housing and Urban Development, the federal agency administering the Section 8 Voucher Program.*

*"HACLA's wholesale exclusion… without consideration of any specific circumstances," he ruled, is inconsistent with HUD regulations. The ruling could impact thousands of Section 8 households in Los Angeles.*

*"Being a low-income individual with disabilities who needs housing assistance shouldn't prevent you from having the caregiver of your choice," said NLSLA attorney Sahar Durali. "People using Section 8 vouchers should have the right to make decisions about their own care."*

**Blanket the Homeless**

When Robert Weissman was installed as President of the San Fernando Valley Bar Association in 1995, he stated that it was his goal to encourage every member of the SFVBA to make a difference in the Valley community.

Under Bob's leadership, to reach that goal, Blanket the Homeless, a unique program that was specifically created to enable members of the SFVBA to support the growing number of local homeless shelters serving the San Fernando Valley.

A call went out for donations from Bar members suggesting that for just $25.00 the donor could supply blankets to 5 people living on the streets. The first year, about 500 blankets were purchased and distributed to local homeless shelters from the SFVBA parking lot.

Under the direct guidance of the SFVBA, through the Valley Community Legal Foundation—the community service arm of the SFVBA—Blanket the Homeless has expanded to include numerous organizations that generously deliver much-needed assistance to the Valley's homeless.

They include MEND, North Valley Caring, Bridge to Home and Loaves & Fishes, all of which provide invaluable services to assist people in finding temporary housing, counseling, mental health treatment, clothing, food, and employment.

In the late 1990s, distribution of the blankets was moved from the SFVBA's offices to the North Hollywood facility operated by LA Family Housing, which offers temporary transitional, as well as permanent, housing and numerous support services for families in need.

> "Thanks to these partnerships, SFVBA members are able to... discover new ways to give back to their community."

As part of the program, occupants of the LA Family Housing have been given access to a free legal clinic, staffed by SFVBA members who have been incredibly generous in volunteering their time and legal skills to provide legal consultations to the facility's residents.

The legal clinic has provided invaluable assistance to numerous individuals on a broad range of issues, including government benefits, housing, landlord-tenant disputes, bankruptcy, family law and criminal law.

Though Blanket the Homeless is managed outside of the SFVBA offices and, as such, has had no financial impact on the SFVBA, the impact on the Valley community has been substantial.

Since 1995, more than 50,000 blankets have been distributed, and countless clients have been given much needed access to helpful legal advice.

For the past 26 years, despite many challenges, the San Fernando Valley Bar Association and its partner organizations have followed through on its commitment to provide the Valley community with ready access to legal assistance and doing all it can to improve the lives of everyone who calls the San Fernando Valley home.

# Referring the Best Attorneys Since 1948

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

## Programs

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

Hablamos Español

Attorney Referral Service

San Fernando Valley Bar Association

MEETS ABA STANDARDS FOR LAWYER REFERRAL
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THE RIGHT CALL FOR THE RIGHT LAWYER

Certified Lawyer Referral Service
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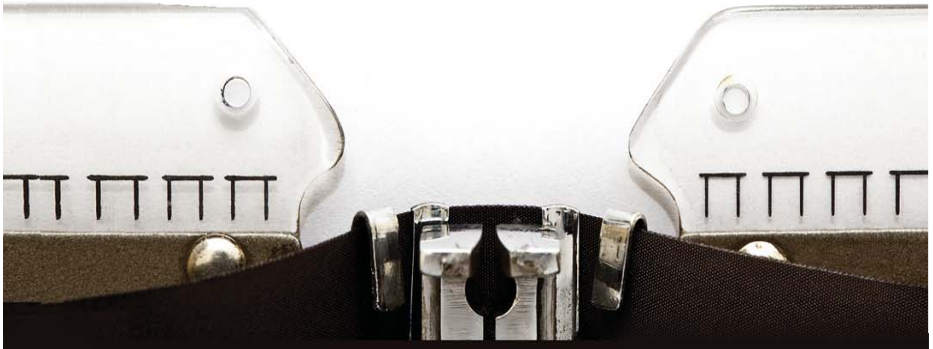
**(818) 340-4529**

www.SFVBAreferral.com

# Retrospective




*The Beatles visited the Bob's Big Boy on Riverside Drive in Burbank/Toluca Lake at the end of August 1965 during their summer tour. The police were called in to control the screaming crowd of fans.*

*According to the management at the iconic restaurant, the "Fab Four" sat in the "last booth on the right as one walks in, where the end of the windows facing out towards Riverside Drive stop."*

*Extensive research has failed to determine what they ordered. Bob's has a plaque on display at the booth they sat in.*

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## of the San Fernando Valley Bar Association

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Valley Community Legal Foundation

San Fernando Valley Bar Association founded in 1926

# A Proposed New Year's Resolution

**JUDGE FIRDAUS F. DORDI**
Co-Vice-President,
VCLF Education Committee

fdordi@lacourt.org

AS A NEW YEAR APPROACHES, WE REFLECT ON the past and ponder what personal and professional resolutions to make for the upcoming year.

With "we," I mean those of us in this noble profession—the law.

In a time when the social, political, and economic divides in our country continue to widen, what can "we" do to strengthen our democracy.

The sustainability of a form of government of, for, and by the people depends on an educated and engaged public. "We" are among those most educated and engaged in civic life, begging the question—What responsibility do "we" bear?

Chief Justice John Roberts wrote in his 2020 year-end report on the judiciary, "*Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it*."

> "Each generation has an obligation to pass on to the next, not only a fully functioning government responsive to the needs of the people, but the tools to understand and improve it."

According to a 2016 survey conducted by the Annenberg Public Policy Center, 1 in 4 Americans are unable to name all the three branches of government. Public trust in our elected leaders in Washington to do the right thing has dwindled from nearly 80 percent in the 1960s to under 20 percent in 2019, according to the Pew Research Center.

It is with these concerning statistics and the Chief Justice's sentiment in mind that the Valley Community Legal Foundation (VCLF) will relaunch its *Constitution & Me* program at several Valley high schools in the Spring.

The program engages students in conversations about the Constitution and develop a greater understanding of how it impacts their daily lives. It also stands to develop their reading, analytical, and interpersonal skills by demonstrating active listening and cooperating with others to solve problems.

Additionally, the program creates an opportunity for the students to interact with positive adult role models from the legal community and increase their awareness of the role of the courts and our legal system in adjudicating disputes.

The program consists of three one-hour sessions with the first two sessions a team consisting of one judge and two attorneys lead a Socratic dialogue. In the first session, the team moderates a discussion involving a hypothetical factual scenario that juxtaposes school safety concerns with students' First Amendment rights.

Realizing that this situation could have easily occurred at their school, to them, or their classmates, the students recognize how the law and the Constitution relate to their experiences. The fictional case has made its way to the U.S. Supreme Court and poses an undecided question the Justices must resolve.

In the second session, the team leads a discussion around the relevant Supreme Court authority bearing on the legal question to be resolved, providing an analytical construct for the students to consider in resolving the issue.

The third session has the student attorneys arguing the case to student justices, who then deliberate aloud for their peers and resolve the dispute.

As you ponder what personal and professional resolutions to make for 2022, please consider participating in the VCLF's *Constitution & Me* program as a means of serving both interests.

In doing so, you will have a unique opportunity to pass on to the next generation not only the joy of engaging in civic life but also the tools to better understand and improve our democracy.

## ABOUT THE VCLF OF THE SFVBA

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

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