

VALLEY LAWYER

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Silver Tongue:
Financial Elder Abuse
and Precious Metals

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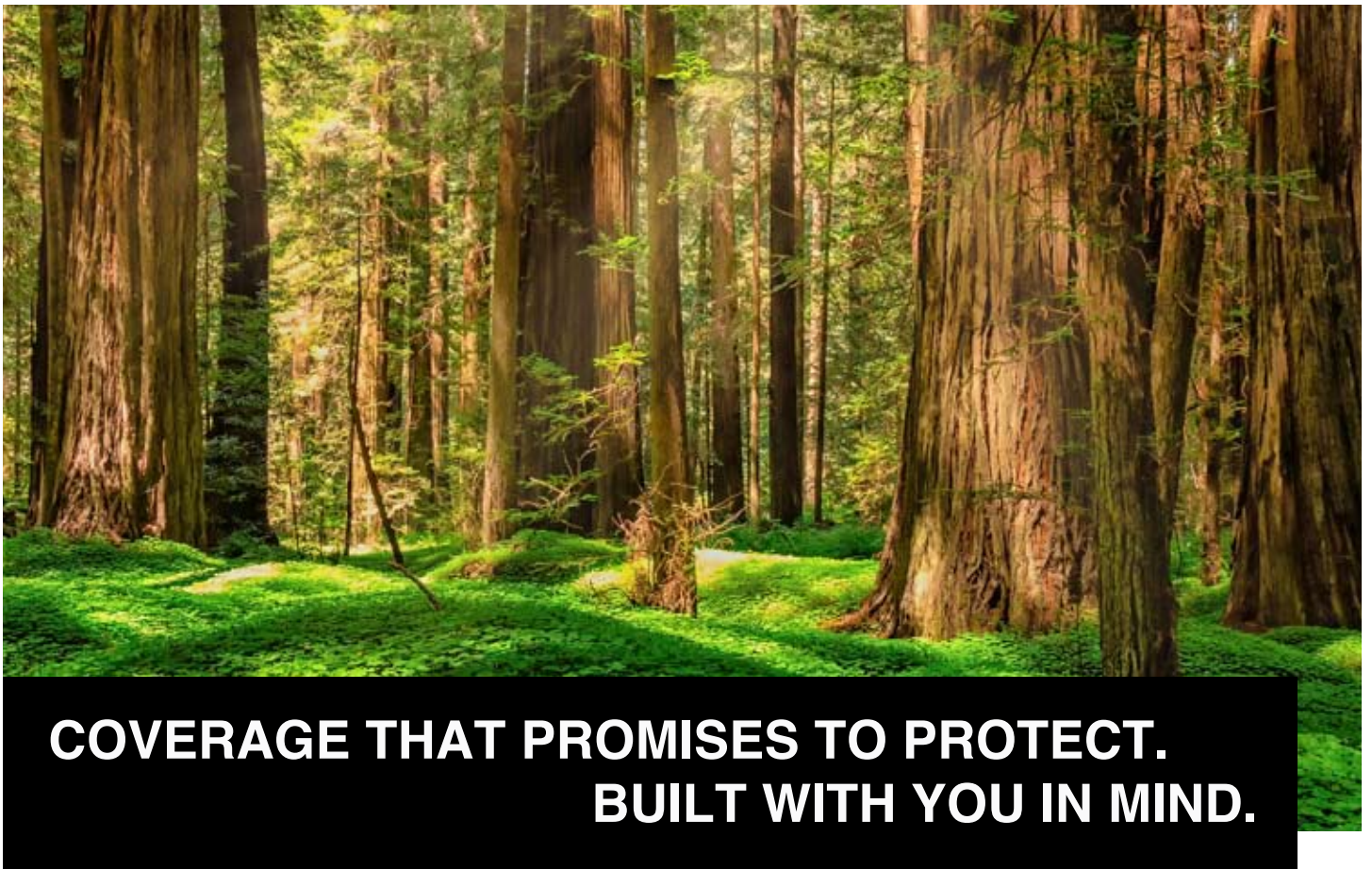


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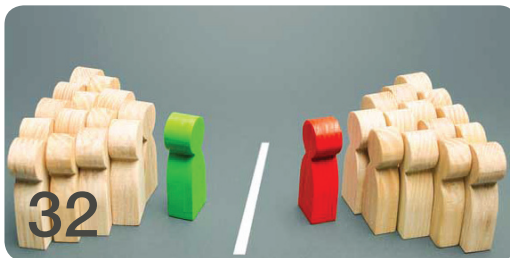
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Communication is Key

**ROSIE SOTO
COHEN**
Executive Director



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AFTER THE PANDEMIC ground to a close, the Bar shifted its communication with members from print to predominantly electronic.

Over the next few months, members will see that the Bar is forging ahead with events and developing new ones as the Bar's leadership is hard at work implementing joint networking events. In addition, there is a collaborative effort with community leaders to offer public forums, while, behind the scenes, work with the courts is underway to reinstate volunteer opportunities for the Probate Settlement Program and family law courts.

In this issue of *Valley Lawyer*, there is a photo gallery from the recent April 26 Installation Celebration—a tremendous success thanks to the sponsors, excellent attendance, and the hard work of the Programs Committee, which is chaired by SFVBA Trustee Amanda Moghaddam.

Expect more photos and a special feature on the event and its sponsors in the next issue of *Valley Lawyer*.

For Judges' Nigh this year, Judge Firdaus F. Dordi was unanimously approved by the Board as the Bar's honoree as Judge of the Year. Honorable Maureen A. Tighe will also be honored at the event with a lifetime achievement award. Expect more details in the coming weeks.

This month, SFVBA members can expect information from the Nominating Committee, which is chaired by SFVBA Immediate Past President David G. Jones. The Committee will seek attorney members who aspire to help lead the Bar through the upcoming year and would like to be considered for nomination as a candidate for a seat on the Bar's 21-member Board of Trustees.

The Nominating Committee selects the most qualified candidates for office who are committed to the Association's growth and reflect the diversity of the Bar's membership.

The 2022 Application for Nomination to the SFVBA Board of Trustees will soon be available on our website homepage—www.sfvba.org. Have questions? Contact Immediate Past President, David G. Jones at djones@lewitthackman.com.

The critical point here is that you will not learn more about these events and programming if you're not subscribed to the Bar's email efforts, which are communicated via Robly.

Despite the importance of ensuring that you are subscribed to Robly to receive communications from the SFVBA, many are still missing out.

If you are not receiving five to ten emails from the SFVBA monthly, here are a couple of things you can do:

First, add rosie@sfvba.org, info@sfvba.org and events@sfvba.org to your contact list. If you have already done this, check your SPAM filter settings to make sure that those addresses are not being blocked.

Check with your IT department about a company firewall or Anti-Virus or spam scanning software quarantining the message.

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Don't miss out on what's happening at your SFVBA. Get involved! Stay connected! 🗑️

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- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
- Federal RICO prosecution: Not Guilty verdict on RICO and drug conspiracy charges (Downtown, LA)
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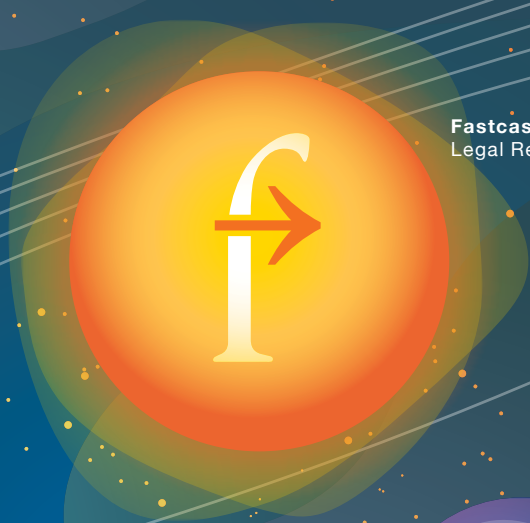
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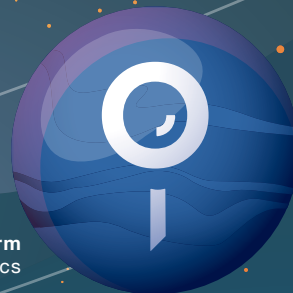
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Quite a Character

THIS IS A STORY ABOUT A MOM. Let's call her Elizabeth.

The daughter of Italian immigrant parents who in 1911 settled in Providence, Rhode Island, she learned the hard lessons that come from experiencing loss at a very early age.

By her ninth birthday, she had lost her father to a heart attack at age 39, two sisters to scarlet fever, and an infant brother to a tragic tumble from a high chair—all at the doorstep of the Great Depression, during which everything her father had saved working as a shoemaker evaporated.

Somehow, Elizabeth—along with her two surviving sisters, and her own resilient Mom—struggled through the tough years to graduate from high school and attend the Rhode Island School of Design, where she earned a Certificate in Marketing and exhibited a spirit and energy that landed her a job offer that made her, at age 19, the youngest children's apparel buyer at Filene's swanky flagship department store in Boston.

One Saturday afternoon in late 1940, she answered the door at 50 Oregon Street to a young man selling \$500 Massachusetts General Life Insurance policies door-to-door, and it was, so to speak, off to the races.

Two years passed quickly, love bloomed, and Elizabeth and the young Irish salesman—let's call him Danny—were married. It was the start of a marriage that would cross the country, span 52 years, and produce two sons, four grandchildren, and six great-grandsons.

It was a happy day for the couple, but, alas, more loss, real and potential, was in the offing for them and the whole world. It was October 1942, six weeks after they exchanged their vows, Danny was drafted into the Army, trained as a medic and shipped off to Europe.



Elizabeth waited, day after day after day, for almost three years wondering if a telegram would arrive informing her that her husband was no more—a distinct possibility when official word was received that the best man at their

MICHAEL D. WHITE
SFVBA Communications
Manager



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wedding, a dear friend to both of them, had been killed in action in the final days of the war in the Pacific.

Elizabeth endured and her beloved Danny returned home to be discharged with a stutter and a head full of memories he spent the rest of his life trying to forget.

The years passed with ups and downs, a bout with cancer, and a near-fatal car crash, and she carried on, loved and loving, with all her imperfections—a brave, shining, and often entertaining, example of a woman who played the hand she was dealt with courage and grit.

She carried on not so much because of, but in spite of the circumstances in which she found herself—a lively circus parade in a rainstorm.

If you haven't already figured it out, Elizabeth was my Mom. This month will mark 17 years since she died, stricken with Alzheimer's and Parkinson's. I miss her very, very much.

Love you, Mom. Thanks for being you. 🪦

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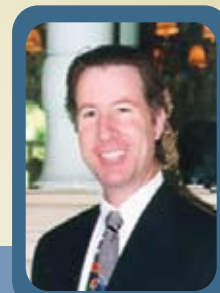
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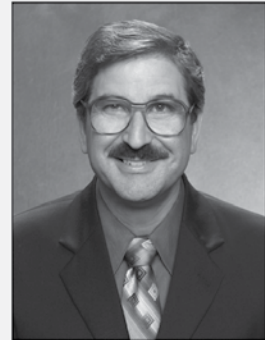
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1	2 Santa Clarita Valley Bar Association Lunch & Presentation 11:30 AM - 1:30 PM THE OAKS CLUB, VALENCIA Sponsored by  Digital Fluency and Best Practices. Free Event for Attorneys and CPAs Call Sarah (661) 505-8670 for info and reservations.	3	4	5 ZOOM MEETING Membership and Marketing Committee 6:00 PM	6	7
8 	9	10 WEBINAR Probate and Estate Planning Section Charitable Strategies 12:00 NOON Stephanie Buckley of Wells Fargo Bank will review the benefits and pitfalls of utilizing the various business entity types for charitable gifting maximizing the charitable deduction upon sale of business; donor advised fund, private foundation, charitable remainder trust. (1 MCLE Hour) Board of Trustees Meeting 6:00 PM	11	12	13	14
15	16 ZOOM MEETING Mock Trial Committee Meeting 6:00 PM	17 WEBINAR Taxation Law Section Generation-Skipping Tax Allocation, Out-of-Order Deaths and Common Pitfalls: Understanding the Instructions to Schedule R that You Always Skip Over 12:00 NOON Alex Hemmelgarn, LLM, ESQ will provide a brief history of the Generation Skipping Transfer (GST) Tax regime, manual and automatic allocations, taxable terminations, direct skips, indirect skips and trust planning, issues with out-of-order deaths, as well as common mistakes (including issues with ILITs that began before automatic allocation in 2003, so they have an inclusion ratio greater than 0), and the desired changes to the GST in the 2022 Green Book. (1 MCLE Hour)	18	19 Santa Clarita Valley Bar Association Scholars & Benchmark 6:00 PM Cocktails 7:00 PM Dinner THE OAKS CLUB, VALENCIA RSVP: https://scvbar.org/events/	20 WEBINAR Bankruptcy Law Section Fox on Bankruptcy Law 12:00 NOON Section Chair Steve Fox takes a look at various and interesting Bankruptcy Cases, Issues and events. (1 MCLE Hour)	21
22	23 WEBINAR Family Law Section Tax Issues and Family Law 5:30 PM Lynda Schauer, CPA, and Judge Lee Arian discuss the latest. (1 MCLE Hour)	24 SFVBR-San Fernando Valley Bar Review A Social Gathering! 6:00 PM TAVERN 101 GRILL AND TAP HOUSE 28434 ROADSIDE DRIVE AGOURA HILLS 91301 Join this monthly gathering of Bar Leaders, attorneys, friends and associates. This month the San Fernando Valley Bar Review travels to Agoura Hills. Come join President Elect Matthew Breddan and other Bar Leaders. No Host Bar.	25 WEBINAR Business Law and Real Property Section Hot Topics in Real Estate 12:00 NOON Attorney Jennifer Felten will discuss: Implementation of AB 1466 which requires redaction of illegal restrictive covenants. SB 8, 9 and 10 and their impact on housing development and ownership. Electronic notarization in California and nationwide and the changes this practice is bringing to real estate transaction. Issues with obtaining title insurance on transfer upon death deeds. Availability and cost of fire insurance for both existing owners and new acquisitions of real estate. (1 MCLE Hour)	26	27	28
29 	30 MEMORIAL DAY REMEMBER AND HONOR					



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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 23.

By Thomas G. Adams and Daniel N. Greenbaum

Silver Tongue: Financial Elder Abuse and Precious Metals

Sadly, financial abuse of the elderly can take many forms and arise out of all types of connections, from close relationships with unscrupulous family members to anonymous overseas phone or web scammers.



ACCORDING TO THE FBI, AMERICAN SENIORS lose more than \$3 billion per year to elder fraud. A 2010 study of the extent of elder abuse in the U.S. found that 11 percent of individuals aged 60 and older residing in the community reported some type of abuse in the past year.

A similar study, published in 2008, found that 3.5 percent of community-residing older adults aged 57 to 85 reported financial mistreatment.

Sadly, with over half of the nation's wealth in the hands of people over the age of 50, seniors are a natural target for scammers.

Financial abuse of the elderly can take many forms and arise out of all types of connections, from close relationships with unscrupulous family members to anonymous overseas phone or web scammers.

These attacks play on growing financial fears regarding inflation, stock market volatility and retirement insecurity, and relying on most people's unfamiliarity with commodities trading, and high-pressure tactics and fraudulent representations to bully or mislead people into making disastrous financial decisions.

Nefarious precious metal brokers, in particular can ruin their elder abuse victims. And, because most of the victims are retirees, they lack the time or ability to recover from such a devastating financial loss. This leaves their children and society to pick up the pieces while the scammers walk away with their ill-gotten gains.

This article focuses on targeted attacks on the elderly by companies selling precious metals and provides a roadmap to stop these bad actors from taking advantage of the country's growing population of retirees.

Of course, buying precious metals is not an unusual financial tactic. Like any investment, it comes with risk and, on its face, may be a valid investment strategy for the informed investor in an arms-length transaction.

If a buyer gets what they paid for, there is no problem, but, unfortunately, all too often, that is not what happens.

Likely Targets for Financial Abuse

According to a study conducted by the National Center for Biotechnology Information (NCBI), the most likely target for elder financial abuse is a white female who lives alone.¹

The older the person, the more likely they are to be targeted for this form of abuse. General risk factors include

age; social isolation; the recent loss of a loved one; and a lack of familiarity with financial matters, the NCBI found.

Similar studies have also found a connection between physical infirmity and financial abuse, while problems with hearing, forgetfulness, and cognitive impairment can also make a person more likely to be victimized by a fraudulent transaction.²

Peddling Fool's Gold

Mary is an elderly woman who lives alone, having recently lost her husband. She is not an active investor.

Her physical condition is deteriorating, and she is losing her hearing, which makes telephone conversations particularly challenging.

Mary was listening to her favorite talk radio host when she heard an advertisement touting precious metals. The message was frightening: *"The dollar is collapsing!...Inflation is running wild!..."* "Your retirement dollars won't be enough to meet your needs!"

The solution? Invest in silver and gold. Precious metals are the perfect vehicle to protect you from the dangerous fiscal policies of the federal government!

On the radio, the host that Mary trusted with the news and commentary is the same voice reading the ad telling her to buy gold. On television, it may be a trusted celebrity from a familiar show or just a well-timed ad that immediately follows a panic-inducing soliloquy by a fear-mongering commentator.

In any case, stoking fear is a common tactic for companies targeting older people, and intentional or not, the show's fear-mongering, coupled with the ad's urgent solution, can be very persuasive.

When Mary called in response to the ad, the company misled her, or maybe outright lied to her.

Mary wasn't just another customer for the precious metals dealer. She was their perfect target.

The precious metals scammer does all business over the phone. Nothing is in writing. Nothing was there for Mary to review. She didn't hear or wasn't told about the 33 percent fee they're taking for a simple transaction.

Critical details were kept from her, or delivered in a way she could not understand. The scammer knew she isn't getting the full picture. The scammer knew she was expecting one thing, but would be getting something else. Although Mary's confusion was obvious, the salesperson pushed forward anyway.

The scammer communicated the rules of the transaction in vague terms. There were fees for each purchase and service fees. They discussed bullion and coins, and Mary believed



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she had agreed to buy bullion, but the transaction was for commemorative coins.

They told her there was a 90-day guarantee, but they never provided paperwork to support that.

Indeed, the paperwork she received said that all transactions are final. They sold her with representations that buying precious metals is a safe investment and told her that precious metal prices are about to skyrocket and she needed to act immediately.

They rushed Mary through a verbal confirmation over the phone that obscured the fees she would be paying, and what she would actually be buying—silver commemorative coins—what those coins are worth, and the risks involved in the purchase.

They told her this is standard procedure, recorded her confirmation, and later used it to threaten her with legal action. Having frightened her into signing, they scared her into staying quiet about what had transpired.

She went through with the transaction and, when she received the paperwork, she discovered that the company had charged her. She discovered that the company had charged her outrageous fees, with a third of the money she gave them going to fees rather than gold or silver.

With the help of an attorney, she discovered that she did not get what she was promised—instead of gold or silver bullion, she was invoiced for coins that they falsely alleged are more valuable than their net weight value and sold with expensive service fees.

This is not a fair transaction. The precious metal scammer wasn't targeting Mary because she will benefit from the product; they targeted her because she is more likely to be tricked and less likely to try to recoup what was taken from her than a less vulnerable consumer.

At no point were Mary's rights or best interests taken into consideration. The precious metals scam artists weren't selling her anything she would buy if it weren't for their unfair business practices. They relied on fraud and misinformation to trap her into a disastrous transaction so that, in the end, she would be left in a far worse position than she began, regardless of how the market performed.

An Abusive Transaction

Since buying gold, silver, or other commodities is a potentially reasonable investment, it's important to identify what makes this scam problematic.

Some of the elements to watch out for include:

- Hidden or exorbitant fees, often 33 percent or higher;
- Lack of documentation, with binding transactions being handled over the phone;
- Misrepresentations of what is being purchased, such as gold bullion, silver bullion, commemorative coins, etc.;

- Outrageous unwritten promises that aren't or can't be kept, including no-risk guarantees, guaranteed returns, etc.;
- High-pressure tactics, including limited-time offers, pressure to commit without a written contract, etc.; and,
- Lack of value. For example, precious metals are publicly traded. If the company is simply buying silver or gold for the client and charging a massive fee to do so, they are providing no actual value.

Justice for Elder Abuse Victims

The California Welfare and Institutions Code defines financial abuse of an elder.

For this type of transaction, financial abuse of an elder occurs when a person or entity:

- Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for wrongful use or with intent to defraud, or both.
- Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for wrongful use or with intent to defraud, or both.³

In either case, financial elder abuse has occurred if the person or entity "*knew or should have known*" that this conduct is "*likely to be harmful to the elder or dependent adult*."⁴

A violation also occurs in failing to return the property.⁵

Unfair Competition Law

Were the tactics used to sell Mary precious metals acceptable under the law?

No. Businesses are not free to use any tactic, regardless of consequence, fairness, truth, or the law, to get sales. The difference between a slick salesperson and a scam artist is often in the details.

California's Unfair Competition Law is laid out in the Business and Professions Code.⁶

Unfair competition is defined to include, "*any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising*..."

In this scenario—which is similar to, if not identical to, most precious metal scams—this occurred in a myriad of ways:

- The company told Mary she was buying silver bullion. Instead they sold her commemorative silver coins.
- They told Mary she would pay a small fee. She paid 33 percent.
- They told her she could get a full refund 90 days after making the purchase. Their actual written policy is that all transactions are final.
- They promised her that buying precious metals was a

safe investment. The truth is that commemorative coins are not the same as precious metals, and may be worthless compared to their face price. Moreover, there are risks in all markets, and promises of safety are a sign of a scam.

- They told her that precious metals prices were about to skyrocket and she needed to act now. In reality, there is no way to know whether the price will go up or down at any given time. There is room for FOMO—Fear of Missing Out—appeals in a sales call, but any kind of representation that the market will act a certain way is patently misleading.

These companies violate unfair business practices laws in other ways, as well, such as the scammer intentionally excluding vital information in order to get the sale.

An action for Unfair Business Transactions may be brought against an “*unfair, fraudulent, or unlawful*” transaction.

The transaction is fraudulent under the law if it is fraudulent pursuant to common-law or statutory fraud law—a false or misleading statement made, with knowledge of its falsity or misleading character at the time it is made, with reasonable reliance of the recipient.

The transaction is “*unlawful*” if it is in violation of any applicable law. Whether a transaction is “*unfair*” is a more complicated question.

Most recently, the Court described the test for “*unfair*” practices:

“The standard for finding an ‘unfair’ practice in a consumer action is intentionally broad, thus allowing courts maximum discretion to prohibit new schemes to defraud. The test of whether a business practice is unfair involves an examination of that practice’s impact on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant’s conduct against the gravity of the harm to the alleged victim. An ‘unfair’ business practice occurs when that practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.”⁷

In this case, the scammers met each of the three prongs. But even if in a case where the facts support the “*unfair*” prong, if the scammers’ actions are “*substantially injurious to consumers*,” then there may be grounds to help get your client’s money back.

Breach of Contract

Is the purchase of the precious metals a valid transaction? Is it even possible to legally sell this product under these terms?

In many cases of elder financial abuse, there is a difference between what is promised and what is performed. This creates the potential for a breach of contract action.

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The basic elements of a breach of contract are:

- A valid contract exists.
- The plaintiff fulfilled their obligations under the contract or was excused from doing so.
- The defendant did not fulfill their obligations under the contract.
- The plaintiff was harmed by this nonfulfillment.

A valid contract can be oral, written, or a combination of both.

The oral nature of the deal between Mary and the precious metals scammer isn't sufficient for a breach of contract action as the breach occurred when she was not given what she was promised.

Her recollection of the phone call and the terms presented in that oral agreement can be used as extrinsic evidence in litigation, which is admissible under an exception to the parol evidence rule to show that a contract was induced by fraud.⁸

Mary was told she was buying silver bullion; she received silver commemorative coins. She was told she had 90 days to get her money back; the company offered to buy back the silver coins at market rate, which falls far short of what she paid them. They told Mary she would have to pay a "small fee" to complete the transaction, but charged her 33 percent.

When Mary paid the company, she fulfilled her obligations under the contract. At that moment, though, the scammers had an obligation to fulfill all the promises they had made to her, verbal or written. If they failed to do so, and Mary is harmed, they have breached the contract.

The California Consumers Legal Remedies Act (CLRA)⁹

Is there a problem with the product, or just the sales tactics? Is it possible that the transactions are unacceptable because of what is being sold?

The CLRA covers a variety of situations that often arise in precious metals scams.

Depending on the communication between plaintiff and defendant, the seller may have:

- Represented "that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have."¹⁰
- Represented "that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."¹¹

Violations are determined by a preponderance of the evidence, and there are procedural hurdles, such as a notice

letter or an affidavit of venue, that must be carefully followed when bringing a CLRA claim, so review the statute well before filing a lawsuit.

In this case, the scammers told Mary that she was buying bullion, but sold her commemorative coins. This is obviously a violation of the CLRA.¹²

If, however, she knew that she was buying coins, under the auspices that they would become more valuable than their face value, the CLRA may not be implicated, but if the representation is that they are of a value that they clearly are not, the CLRA would be implicated.

If the company told her that she was buying commemorative coins, but also suggested that the coins are very rare, and therefore more valuable, that could also violate the CLRA.

Some coins are rare; others are not. If she was sold on the value of these particular coins, rather than on the value of the silver they are made of, the company's representations about the coins could be actionable.

Because Mary is a senior and is disabled, if she is able to prove that she was harmed and that she is entitled to up to an additional \$5,000, or possibly \$15,000, pursuant to the Code, which provides for three times the penalty listed in a statute, in addition to her damages, costs, and attorney's fees.^{13 14 15}

Additionally, the court may order the company to stop engaging in the type of transaction that caused harm to the plaintiff. This may be true even if the plaintiff is not suing in the capacity of a representative plaintiff.

Fraud

The California Civil Code defines fraud as, "*an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.*"¹⁶

One of the benefits of a fraud claim is the availability of exemplary damages, sometimes referred to as punitive damages. If there is clear and convincing evidence of fraud, Mary can obtain exemplary damages along with actual damages under California law.

Negligent Misrepresentation

The Code also states that anyone "*who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.*"¹⁷

The nature of the deception is fairly broad.

In addition, the Civil Code lays out four situations that all amount to deceit:

- The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

- The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

- The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact.

- A promise made without any intention of performing it.¹⁸

This type of deceit is a part of the sales tactics the precious metals scammers used against Mary. They told her that she was buying bullion at market value but really gave her silver coins at an inflated rate, and, while they told her that they were charging a "small fee," they really took 33 percent.

They also told her that the value of her silver would go up dramatically, when really they had no way of knowing what the market would do.

Strategies to Combat These Scams

There are several tools available to help financial elder abuse victims like Mary.

The first step is to get an expert involved early on to determine any possible causes of action; next gather information from the victim and the offending parties.

Questions to be asked:

- Were the company's employees trained to make sure the elderly consumer could hear what they were saying?
- Did they take any precautions to ensure they didn't take advantage of elderly clients?
- Did they take steps to make sure the clients understood the deal before taking the money?
- What guidance are they given to ensure that consumers are entering into these transactions with a proper understanding of the bargain?

Experts to Support a Finding of Elder Financial Abuse

Supporting evidence of the consumer's state of mind or understanding of the agreement may be necessary. Financial advisors, bankers, commodities experts, and other financial professionals can help explain the transaction.

Neuropsychologists, audiologists, geropsychologists, and other medical professionals can help provide evidence about the condition, emotional distress suffered, and possible limitations (or susceptibility), of elderly consumers.

Statutes of Limitations and Arbitration Agreements

The causes of action discussed above each operate under different statutes of limitations.

Under the Business and Professions Code, claims, for example, must be brought within four years of the transaction.¹⁹

Fraud, negligent misrepresentation, and CLRA claims must be brought within three years of the discovery—or the date in which, through diligence, a reasonable person would have the discovery—of the cause of action, while breach of written contracts and oral contracts carry four-year and two-year limitations, respectively.

Furthermore, many of these sales contracts contain extraordinarily one-sided arbitration agreements containing shortened statutes, and bizarre rules that were not bargained for at the time of the transaction. They may or may not be voidable or contain exceptions allowing for recovery through the equitable causes of actions discussed above.²⁰

It is important, therefore, to investigate these cases quickly and prosecute them in a timely fashion.

Remedies

The type of relief available is a major component in combating elder financial abuse.

With many of the causes of action having statutorily cumulative remedies, a successful plaintiff may qualify for actual economic damages and non-economic damages such as stress; anger; damage to self-esteem; guilt; damaged relationships; loss in physical health; mental health/suicidal ideation; loss of confidence; fear in further financial decisions; and PTSD-like symptoms in victims of Ponzi type schemes; as well as punitive damages, attorney's fees, statutory penalties, costs of suit, and other forms of restitution and injunctive relief.

Under the California Welfare and Institutions Code, anyone proven liable for financial abuse by a preponderance of the evidence can be ordered to pay compensatory damages, reasonable attorney's fees and costs, and any other remedies available under the law.²¹

Defendants may include anyone who assists in the transactions, even if they don't have actual knowledge of the underlying harm. If the scammer has vanished with the money, a deeper look is needed to find the parties that made the scam possible, including, for example, banks that fail to follow guidelines to stop red-flag transactions.

In addition to these compensatory damages, enhanced remedies are available if the plaintiff can prove, by clear and convincing evidence, that the defendant is liable for abuse or neglect and that the defendant has been guilty of recklessness, oppression, fraud or malice in the commission of the abuse/neglect. These remedies include attorney's fees and costs.^{22 23}

Because this is the same standard required for punitive damages pursuant to the Code of Civil Procedure, punitive damages would also be available if enhanced remedies are available.²⁴

When it comes to CLRA claims, the California Civil Code says consumers who can demonstrate a violation by a preponderance of the evidence are entitled to:

- Actual damages.
- Punitive damages.
- Restitution of property.
- An order to force the defendant to stop using the methods, acts, or practices that resulted in the violation.
- Other relief as determined by the court.
- Statutory penalties of \$5,000, or possibly \$15,000.²⁵

In addition, the CLRA provides successful claimants with court costs and attorney's fees.

The remedies available for fraud include the expectation, or benefit of the bargain damages, a full rescission refund, emotional distress, punitive damages, interest, and costs.


The remedies available for negligent misrepresentation are the same as fraud, except that emotional distress damages are not awarded.

The remedies available for Unfair Competition are restitutionary in nature, and include return of the money with interest, as well as injunctive relief.

The remedies available for breach of contract generally are the same as for negligent misrepresentation. A contract may also provide for additional remedies, such as attorney's fees.

Conclusion

Elder financial abuse is an ever-changing problem. New scams appear every day to rob the elderly of their life's work.

The precious metals scam, in particular, is brazen and unusually organized. These companies operate relatively openly, making them seem legitimate. That makes stopping them all the more important. 

¹ <https://www.ncbi.nlm.nih.gov/books/NBK98784/#ch13.s9>.

² <https://www.ncbi.nlm.nih.gov/books/NBK98784/>.

³ California Welfare and Institutions Code § 15610.30.

⁴ *Id.* § 15610.30(b).

⁵ *Id.* § 15657.6.

⁶ Business and Professions Code (BPC) Section 17200.

⁷ *Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1155–1156 (internal citations omitted).

⁸ *Julius Castle Restaurant Inc. v. Payne* (2013) 216 Cal.App.4th 1423, 1442.

⁹ California Civil Code § 1750.

¹⁰ *Id.* § 1770(a)(5).

¹¹ *Id.* § 1770(a)(7).

¹² CLRA subsection (a)(7).

¹³ Over 65 as defined by the CLRA § 1760(f).

¹⁴ As defined by CLRA § 1760(g).

¹⁵ California Civil Code §§ 1780(b)(1) and 3345.

¹⁶ *Id.* § 3294(c)(3).

¹⁷ *Id.* § 1709.

¹⁸ *Id.* § 1710.

¹⁹ Business and Professions Code § 17200.

²⁰ See, e.g. *Dennison v. Roseland* (2020) 47 Cal.App.5th 204 [arbitration agreement permeated with unconscionable terms could not be saved].

²¹ California Welfare and Institutions Code § 15657.5.

²² See California Civil Jury Instructions 3104.

²³ See Welfare & Institutions Code § 15657(a).

²⁴ Code of Civil Procedure 3294.

²⁵ California Civil Code § 1780.



Silver Tongue: Financial Elder Abuse and Precious Metals

Test No. 163

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

1. The welfare and institutions code is the only law providing protection for senior citizens from Financial Elder Abuse.
☐ True ☐ False
2. Elder fraud costs seniors more than \$3 billion per year.
☐ True ☐ False
3. Men are more likely than women to be targeted for elder financial fraud.
☐ True ☐ False
4. Precious metals like gold and silver are risk-free investments.
☐ True ☐ False
5. Breach of contract only concerns the defendant's actions. Plaintiffs are not required to fulfill their end to sue for breach of contract.
☐ True ☐ False
6. Clear and convincing evidence is required to obtain attorney's fees in actions seeking recovery for the financial abuse of an elder.
☐ True ☐ False
7. California has a statute aimed at combating financial elder abuse.
☐ True ☐ False
8. High-pressure sales tactics are inherently misleading and therefore unlawful.
☐ True ☐ False
9. The later-produced contract after a sales call contains the only contractual language that is binding on the parties. The representations in the call have no evidentiary value.
☐ True ☐ False
10. It is not negligent misrepresentation if the seller did not know, for a fact, that the statement was untrue.
☐ True ☐ False
11. A successful claim under the California Consumers Legal Remedies Act (CLRA) allows the court to order a company to stop using unfair practices.
☐ True ☐ False
12. Financial elder abuse only occurs when the perpetrator intends to defraud the victim.
☐ True ☐ False
13. Misleading advertising is considered to be a violation of Business and Professions Code 17200.
☐ True ☐ False
14. Only written contracts for the sale of precious metals are valid.
☐ True ☐ False
15. A violation of California Civil Code § 1770 must be proved by a "clear and convincing" evidentiary standard.
☐ True ☐ False
16. Hiding a material fact regarding the purchase of precious metals is fraud.
☐ True ☐ False
17. When prosecuting a financial elder abuse claim, it is advisable to hire an expert early in the process to speak with the victim.
☐ True ☐ False
18. Under the CLRA, if you are considered a senior or disabled, you may be entitled to three times the penalty listed in a statute.
☐ True ☐ False
19. Under California Welfare and Institutions Code § 15657.5, the only proper Defendant is the one who actually spoke to the victim.
☐ True ☐ False
20. You are not entitled to emotional damages for negligent misrepresentation.
☐ True ☐ False

Silver Tongue: Financial Elder Abuse and Precious Metals MCLE Answer Sheet No. 163

INSTRUCTIONS:

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

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METHOD OF PAYMENT:

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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.

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ANSWERS:

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

- | | | |
|-----|-------------------------------|--------------------------------|
| 1. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 2. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 3. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 4. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 5. | <input type="checkbox"/> True | <input type="checkbox"/> False |
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| 19. | <input type="checkbox"/> True | <input type="checkbox"/> False |
| 20. | <input type="checkbox"/> True | <input type="checkbox"/> False |

Legal Moms:

Interviews with the Valley's Busiest Female Professionals

In celebration of Mother's Day, five SFVBA moms and legal professionals share their experiences in law, life, and motherhood in interviews with Bar Treasurer Amanda Moghaddam.



Photos by ????????



Amanda Moghaddam is the current Treasurer of the SFVBA. She is a Claims Attorney at Lawyers' Mutual Insurance Company in Burbank and she can be reached at moghaddama@lawyersmutual.com.

I AM A VERY LUCKY WOMAN. I HAVE a beautiful family, a job that I love, and my friendships present me with the fullest that life has to offer.

I have the privilege of being heavily involved in the San Fernando Valley Bar Association on several levels, and continue to be amazed at the level of commitment I've seen from so many of the women who help make this association hum.

This Mother's Day, I want to tell you a little bit about what some of those amazing women do for your bar association, how they work volunteering into their everyday lives, and what motherhood means to them.

It was my plan to include lawyers, paralegals, legal assistants, and other moms from our SFVBA community in this article, but, in the end, busy schedules limited the scope I envisioned.

However, I think you'll agree that all of these women are absolute champions worthy of celebration this Mother's Day.



Amanda Moghaddam with her husband Michael Moghaddam, and their children, Ruth, age three and Holden, age nine.



HEATHER GLICK-ATALLA

I first met Heather at a morning networking breakfast in Sherman Oaks.

Dressed for success, she gave one of the best 30-second summaries of her expertise I've ever heard and left a strong impression on me, especially when she mentioned that she had a five-month-old at home.

As a mother of an 18-month-old at the time, I was floored that Heather was anywhere at 7 a.m., let alone at a voluntary meeting where she seemed to know everyone. I had no idea at the time that, years later, I'd be lucky enough to work alongside her on the SFVBA's Board of Trustees.

She is truly one-of-a-kind—reliable, trustworthy, and tenacious.

Heather Glick-Atalla is the principal of Glick Atalla, A Professional Law Corporation.

She is a Certified Specialist in Estate Planning, Trust and Probate Law by The State Bar of California Board of Legal Specialization. Her firm offers clients services in estate planning, non-profit, business, corporate, and real estate law.

She is married to Nabil Atalla, an immigration attorney. Heather and Nabil are the parents of two adorable, smart and loving boys—Nathan, age seven, and Brandon, age four. Heather and her family live in the San Fernando Valley, and she currently serves as the Secretary of the SFVBA.

Heather is a local, having grown up in the community of Lake Encino. Her childhood centered around competitive figure skating—a fact I only learned in interviewing her for this article—and she has many fond memories of her mom taking her to the local ice rink at 5 a.m. to train before school.

Heather Glick-Atalla and sons Nathan and Brandon.

At a young age, her parents instilled in her the value of community service, and she grew up volunteering for various charities and participating in the arts.

Heather attended Oakwood High School, after which she attended the University of Southern California. Like so many of us, after completing her undergraduate work, she faced the question of “now what?” Her father was an attorney, and she reckons that, on some level, she always knew that she would go to law school. As a child, she had loved visiting her father at the office.

So, on a whim, she enrolled in law school at the University of San Diego. It was there that she met her husband, Nabil, who grew up in Amman, Jordan.

When out running errands together, they often bump into people from Heather’s childhood or drive by places where she used to hang out with friends, and she is reminded of how fortunate she is to live in the same city where she was raised.

Despite its size, the Valley really is a small community, and being a native and having developed lifelong connections with its residents helps Heather with her law practice today.

When she received her JD in 2009, it was the height of the recession. Given the market, Heather felt it was a logical, and practical, choice for her to join her father at his practice. After several years of collaborating and being mentored by her father, Heather took over the practice and has not looked back.

When it came to having children, Heather and Nabil were on the same page. After two healthy boys, they decided their family was complete.

They often joke about trying for a girl, but Heather cannot make light of the decision to undergo a third pregnancy, taking maternity leave from the office, caring for a newborn, the financial burdens, and the practicalities of having three children, not to mention the mental and physical exhaustion involved in returning to work after delivery.

In any case, Heather takes stock every day of how lucky she is to get to watch her boys develop and learn.

When asked how becoming a mother changed her, Heather, in her typical direct manner, states that it has altered her most precious resource—time. Juggling a law practice and raising two children is not for the faint of heart, and it is inevitable that a ball, or two, will drop.

Heather handles that challenge with grace, thankful for the fact that she can choose her clients and manage their expectations, and is grateful for her wonderful nanny, Vanessa, who helps provide a nurturing environment for her two boys.

To Heather, the best part about being a working mom is being a living example of a woman’s right to be in the workplace. And in these times, that may mean her boys frequently storm into her home office to introduce themselves to her clients during a Zoom meeting.

Heather has found that the young couples she counsels appreciate that their attorney can balance her personal and professional lives and know that she understands the importance of having a well-drafted estate plan in place.

TAYLOR WILLIAMS-MONIZ

Taylor Williams-Moniz would probably never say this about herself, but she is truly a working woman’s icon.

She is an enviable combination of confidence and wit, mixed with charm and intelligence—an active listener, but also a dynamic speaker. Her clients are lucky to have her as an advocate, and I am extremely fortunate to have her both as a colleague on the Bar’s Board of Trustees and as a friend.

Taylor is a partner with Donahoe, Young & Williams LLP, where her practice focuses on civil litigation, including real estate, business transactions and bankruptcy matters, as well as probate, estate planning, and landlord/tenant issues.

Taylor is a Trustee of the SFVBA and also serves on the Board of Directors of the Santa Clarita Valley Bar Association as the Past President.

Taylor is another Valley native, born in Canoga Park, though her family moved to Texas when she was four. She graduated with honors from the University of Texas at Austin and jokes that her dad knew she “was trouble” when she told him she wanted to be an attorney at only eight years old. She followed through on that dream, receiving her law degree from the Pepperdine Caruso School of Law in 2011.

She cannot remember exactly what made her want to pursue a career in the law, but true to form, when Taylor sets a goal, she achieves it.

Taylor began her legal career working for a solo practitioner, an experience she says taught her what it really meant to practice law. When the firm’s owner moved to Oxnard, Taylor transitioned to the firm of Donahoe & Young. Ten years later, it now serves its clients as Donahoe, Young & Williams.

When asked about children, Taylor says she never really thought she wanted to be a mom. Like her eight-year-old self, adult Taylor was very focused on her career. When she made partner by the age of thirty and seeing her career-oriented friends having children, she thought for the first time that following suit was maybe in the cards. Taylor’s husband, Gregg, works as a pilot, and has quite a full schedule of his own.

Last year, Taylor and Gregg welcomed their son—Cameron—about ten months after a beautiful and intimate COVID-era wedding, and watching him grow and learn has really put things in perspective for her, encouraging her to slow down and enjoy life’s daily joys. While co-owning a law firm and raising an infant is no easy task, Taylor knows that she will always look back on these days very fondly.



Taylor Williams-Moniz and Cameron.

When asked the “can women have it all” question, Taylor responds “no.”

Rather, she says, it’s all about priorities—what do you need versus what do you want? If you are able to balance priorities such as deadlines, childhood development, and spousal connection with needs—such as food, diapers, and some adult beverages on occasion—thrown in with an occasional “want” such as a vacation, then “you are doing a damn good job.”

For most moms, “mommy guilt” can be crushing. It is easy to look around and see the mom who manages to leave early to attend a Mommy and Me class, or the one who has a less demanding job and gets to be present more often.

But Taylor shrugs this off. Yes, she actually is sometimes so busy

that her nanny will take Cameron to activities, and that’s fine by her. She finds that when she tries to give grace to other moms, it is given in return.

And what about time for self-care? In true rock star fashion, Taylor is regimented in her workouts. She tries to get in a minimum of five “sweat sessions in a week,” ranging from Peloton rides to yoga to strength training. She is one of the SFVBA’s founding yoga instructors, helping lead virtual classes offered to Bar members during the COVID pandemic.

I personally love lawyer/mom stories about the instant where the very demanding jobs intersect. Taylor recalls taking Cameron to her office when he was about six weeks old and handing him to her assistant, who was dying to hold the new baby, so that she could handle a call.

Within minutes, the baby managed to poop all over Taylor’s assistant. With her typical wit, Taylor told her assistant that, just like when a bird poops on you, “it’s good luck!”

This story is such a perfect summary of Taylor’s “roll with the punches” approach to litigation and motherhood.

JOY KRAFT MILES

I know it’s cliché, but Joy Kraft Miles is truly the embodiment of her name. She brings so much light wherever she goes, and she leads with her obvious dedication to fairness and inclusion.

I have been so lucky to serve with her on the SFVBA Board of Trustees and, while I can in no way express in this brief article all that she does, I hope to at least paint a small picture of this wonderful human being.

Joy spent her childhood in Long Island, New York. In middle school, she moved with her mother to Los Angeles. Joy’s mother, Marcia L. Kraft, was inspired by the television show *LA Law*, and moved west to attend Southwestern Law School.

As a youngster, she attended many classes with her mother and recalls fondly playing Hangman on scratch paper while her mom attended lectures. Marcia went on to be one of the first women in the Valley to own her own multi-associate law firm, all while raising four children at home.

Having observed Joy’s patience firsthand, it was not surprising to me to learn that she had been an educator. She received her undergraduate degree from California State University, Long Beach, and then obtained a Master’s degree in education from UCLA before eleven years of teaching high school in the Los Angeles Unified School District.

After Joy and her husband became new parents, they were struggling to make ends meet. Both were teachers at the time, and both decided to return to school. Joy’s husband went on to become a school administrator, and Joy decided on a legal career and attending Southwestern, just like her mom.

Joy recalls that, though she did work at her mother’s law firm, there was absolutely no nepotism. She worked her way up from receptionist to law clerk/paralegal, associate

attorney, and partner, all for what were lower-than-average wages. It was “child labor” in its truest form, she jokes.

Everyone who knows Joy knows how great an impact her mother had on her and how very near and dear she is to the SFVBA’s heart.

In 2018, the Valley Community Legal Foundation, the charitable arm of the SFVBA, recognized Marcia for her exemplary community service and outstanding philanthropic contributions to the San Fernando Valley.

Not only did Marcia serve a term as president of the VCLF, but she also oversaw the organization and installation of the Children’s Waiting Rooms at the Van Nuys and San Fernando courthouses.

Continuing to follow her mother’s example, Joy is now the president of the VCLF and pays it forward.

In many ways, I find Joy’s story of her work with her mother to perfectly capture what we celebrate on Mother’s Day—the shining illustration of a mother giving her all, leading by doing, teaching by showing, and receiving by giving. I cannot imagine a legacy more powerful than my own daughter jumping in my footprints in the sand the way that Joy jumped into her mother’s.

Becoming a mother was a protracted process for Joy, who like so many women, suffered multiple pregnancy losses and recalls the years of trying to become a mom as hard and made even more difficult because of the stresses of law school. Joy recounts that luckily her second child was conceived immediately after her last miscarriage, defying the odds.

She was so uncomfortably large that she took her exams standing up, grateful for some pregnancy accommodations. Even more incredible, Joy gave birth to her son immediately after finishing her final examination in family law.

Is it any wonder that she’s such a highly-regarded family law attorney, unrattled by the tensions inherent in her practice area?

Joy has infused motherhood into Kraft Miles, A Law Corporation—“values family, flexibility and females.” Joy has an all-female staff, which she credits to her hybrid approach to family and work.

Associates can work from home if a child is sick, take time off for pick up and drop off from children’s schools, or work from the office if being at home has too many distractions. Joy is steadfast there her success comes from an incredibly supportive husband and in-laws who have always been available when the press of business requires her attention.

Joy’s stories about the intersections between lawyering and being a mom are truly hilarious. She recalls a conversation with her daughter, in second grade at the time, about why Joy wears a suit when other moms wear yoga pants. Her daughter seemed embarrassed.

When Joy explained that a suit is a lawyer’s uniform, but that her daughter could wear yoga pants if she wanted when she grew up, young Madeline replied “nah, I want to work, so I don’t need spousal support.” Joy realized she had absorbed the family-law-work talk, and that it was actually a good influence.

In addition to being the current president of the VCLF, Joy is a Trustee of the SFVBA and is a Certified Specialist in Family Law by the State Bar of California Board of Legal Specialization. Her children are Madeline, age 13, and Sutton, age 10.

Joy Kraft Miles, her husband Elias, and family.



ERIN JOYCE

Erin Joyce is a force to be reckoned with. A former State Bar Prosecutor, she has more than 20 years of experience with attorney discipline cases. She is a marketing extraordinaire, attending nearly every professional conference, networking event, and seminar imaginable. Erin also serves as a Trustee of the SFVBA, where I have had the opportunity to get to know her.

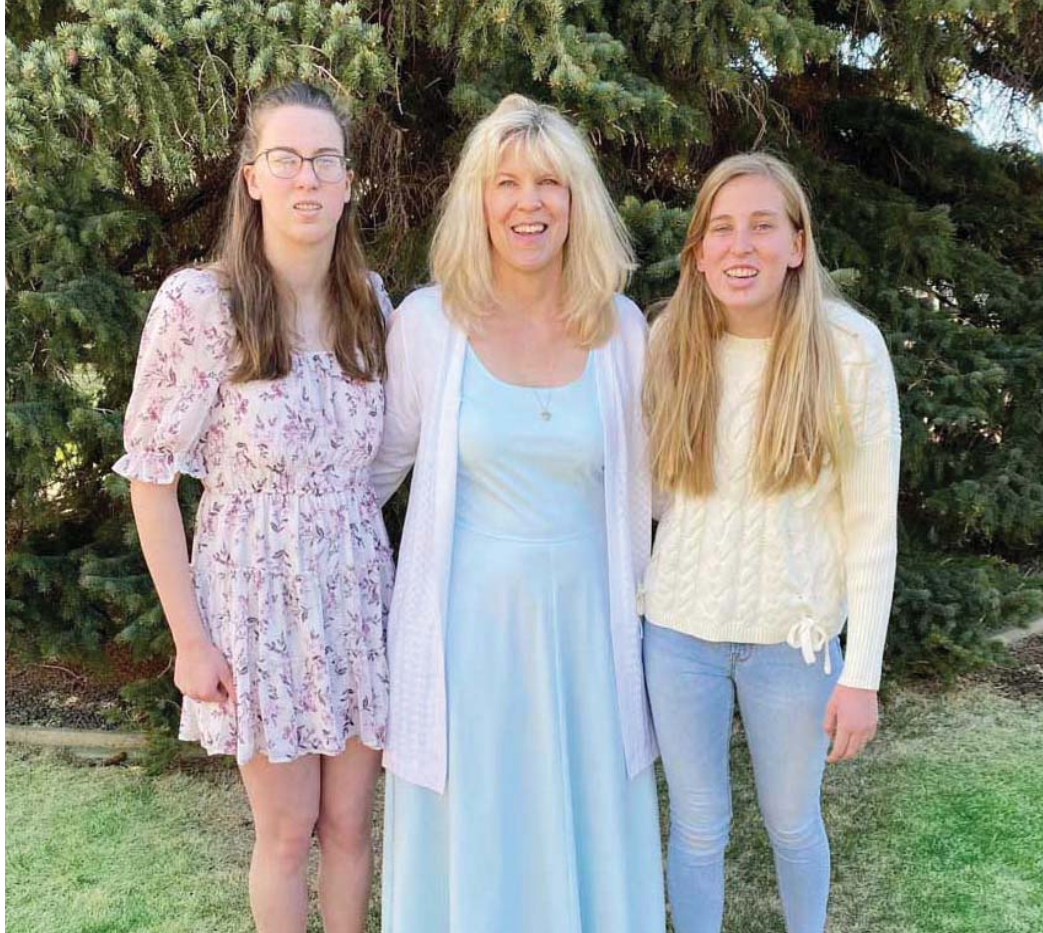
Another Los Angeles native, Erin was born at St. John's Hospital in Santa Monica, where her grandfather was one of the hospital's founding physicians. Erin grew up in Granada Hills, graduated from Alemany High School, and attended UCLA. She had her first child while attending UCLA for her undergraduate degree.

Erin had always intended to go to law school—her father had encouraged her to do so—and she admits that at the time, she had no idea of what being a lawyer meant. At Southwestern Law School, she graduated first in her class and started her career with an intellectual property firm in Pasadena, hired by a law professor who had observed her academic prowess.

One day, Erin heard of a position open at the State Bar's Office of Chief Trial Counsel and decided, on a lark, to apply. Little did she know that she'd be working as a State Bar prosecutor for the next 18 years.

Erin has five children ranging from ages 35 to 15. She was pregnant while at Southwestern and recalls having to dodge out of a moot court session with violent morning sickness immediately following her argument. Her third child was born while she was a young associate at the Pasadena IP firm, and she recalls having to spend a lot of time away from home to attend to pressing deadlines.

There was, she says, a clear line in her journey to motherhood, referring to her last two children as her "second wave."



Erin Joyce and daughters Tara, 17 (left) and Kelly, 15.

As a State Bar prosecutor, Erin had more flexibility and was able to lead her youngest daughters' busy Girl Scout troop, which, at its height, had over 60 girls enrolled.

With children at home for her entire adult career, when asked if she thinks at all about the adage "can women have it all?" Erin provides a simple "no" answer.

Leaving the IP firm, Erin started her own private practice in 2016 to focus on legal ethics and the defense of lawyers and other professionals facing disciplinary proceedings. Erin states that in managing a private practice, some things "have to give."

When interviewed for this article, she was in Dallas for a conference and missing her youngest daughter's first prom. Dresses and shoes were picked out in advance, but Erin had to miss the sendoff. But she was able to take her oldest granddaughter to the American Girl Café the weekend that she was in Texas.

For Erin, while there are tradeoffs, there are also a lot of rewards.

She believes that being a working mom who has been in so many different roles over the course of her career has taught her daughters that they can do anything. For now, both of her girls want to follow their older brothers into the engineering field.

In the 1990s, Erin ran the Los Angeles Marathon five times and, though downtime may be rare, she shares that she's recently returned to running.

Her children are Ian, 35; Brent, 33; Kevin, age 29; Tara, 17; and Kelly, 15.

SARAH NAVARRO

When I decided to write this article, Sarah was one of the first women I thought to interview.

She has been instrumental as of late in assisting with planning the recent SFVBA's Installation Celebration, calling possible venues, obtaining quotes, and making recommendations.

The real reason I wanted to include her, though, is that, to me, she is the perfect Pinterest mom.

She is that mom who always has specially printed invitations to her kids' birthday parties, the perfect individually crafted present for teachers, and adorable pictures to commemorate it all.

In the spirit of full disclosure, Sarah was my legal assistant, and, in my considered opinion, is the best assistant I've ever worked with. Everyone I know who has worked with her would say the same.

She and I first worked together over ten years ago at a medical malpractice defense firm.



I later had the privilege of getting to work with her again when she joined the team at Nemecek & Cole in Encino. It is such an honor to be able to write about one of my oldest legal community friendships.

Sarah is hilarious, genuine, and fierce. Born in Burbank, she was raised in the Valley, where she still lives today, having enjoyed seeing the Valley grow and change, mostly for the better, over the course of her life.

She credits being raised by her single mother for her work ethic, strength, and confidence.

A second-generation graduate of John H. Francis Polytechnic High School in Sun Valley, Sarah still counts several of her high school classmates as among her best friends. Her partner is from Sao Paulo, Brazil, and together they own a home in the Valley where they are raising their two beautiful daughters, seven-year-old Violet, and four-year-old Amelia.

Sarah obtained her first legal job at age 18 when she worked as a legal secretary for a sole practitioner in Calabasas. She entertained thoughts of becoming an attorney, but quickly nixed the idea when she understood that her day would never end at 5:00 p.m.

The following year, she moved to a firm in Encino, and then, after three years, she took an administrative position with a firm downtown.

Sarah says that by that move, she was absolutely hooked on pursuing a legal career. She loved the people she met, the cases she learned about, and the opportunities she saw. She enjoyed being a legal secretary for well-respected attorneys, but she knew that she wanted something more. When she assisted in opening a new law

firm's office, it lit a fire in her and she knew that she would want to do more. Sarah is now an Assistant Administrator at Nemecek & Cole.

A self-described "control freak," it is fascinating that she never desired to find out the gender of either of her children during the duration of her pregnancies.

Her first daughter, Violet, had to be delivered via C-section, as she was in breach position. As both Sarah and her partner worked at a medical malpractice law firm at the time, they were very aware of the risks and potentially negative outcomes that could arise during delivery.

Now, though, they laugh about how one of her partner's medical malpractice experts also happened to be the head of the obstetrics department where Violet was delivered, and they received VIP treatment as a result. Sarah knew when she held that baby girl in her arms she'd be back and, three years later, they welcomed Amelia into their family.

Sarah would say motherhood has changed her for the better, with days off of work now planned around school closures, summer vacations, and school events, and she wouldn't have it any other way.

Dinner with friends are planned weeks in advance, but still being a "control freak," Sarah is okay with that as she credits a supportive partner and her lovely, helpful mother for her success.

Sarah truly loves being a working mom and showing her daughters that they can do anything they set their minds to. With her characteristic wit, she tells them, "Besides being the boss at home, a woman can be a boss in the office as well." 🗑️

Sarah Navarro with Violet and Amelia.



BOARD DIVERSITY: On April 1, the Los Angeles County Superior Court granted summary judgment in favor of the plaintiff in *Crest v. Padilla*, a case challenging the constitutionality of Section 301.4 of the California Corporations Code, which requires certain publicly traded companies headquartered in California to include members from underrepresented communities on their boards of directors.

The statute also authorized the imposition of fines for violations and required companies to file board diversity information annually with the California Secretary of State.

However, the State thus far has not adopted regulations to actually implement these fines.

The Court found that the statute violated the equal protection clause in California's constitution as it treated "*similarly situated individuals—qualified potential board members—differently*" because of racial, sexual orientation, and gender identity classifications without proving a compelling government interest.

The California Secretary of State may appeal the ruling.



ALOHA?: If you're planning to visit Hawaii any time soon, be aware. A soon-to-be law will affect short-term rentals throughout Oahu, increasing the minimum stay at non-resort-area short-term rentals from 30 to 90 days.

The Honolulu City Council recently approved a bill which, if signed into law as expected, would require bookings for short-term rentals in residential areas to be for stays of at least 90 days.

Currently, these stays are restricted to a minimum 30-day booking.

The legislation is reportedly the result of an ongoing conflict between local Hawaii residents and the state's financial dependency on tourism, per reporting by Honolulu Civil Beat, a nonprofit news organization covering Hawaii.

"Short-term rentals are disruptive to the character and fabric of our residential neighborhoods; they are inconsistent with the land uses that are intended for our residential zoned areas and increase the price of housing for Oahu's resident population by removing housing stock from the for-sale and long-term rental markets," the bill reads.

"The City Council finds that any economic benefits of opening up our residential areas to tourism are far outweighed by the negative impacts to our neighborhoods and local residents."



MANDATORY BAR DUES: The U.S. Supreme Court has declined to hear challenges to mandatory state bar associations in Michigan, Oklahoma and Texas.

Three federal appeals courts had upheld state bars' right to collect mandatory bar dues last year, "although the victories for Texas' and Oklahoma's bars were not complete," according to Law360.

The challenges to the mandatory bars sought to extend *Janus v. AFSCME*, the June 2018 Supreme Court decision holding that mandatory union dues for collective bargaining violate public employees' free speech rights under the First Amendment.

Janus was decided 28 years after the Supreme Court ruled in *Keller v. State Bar of California* that compulsory state bars can use lawyer dues to fund activities to regulate the legal profession and improve the quality of legal services, but not for unrelated political or ideological activities.

The State Bar of Texas said it was updating its policies and procedures after the 5th U.S. Circuit Court of Appeals at New Orleans ruled in July 2021 that most of the bar association's legislative lobbying was not relevant to regulation of the legal profession or improving the quality of legal services. But the appeals court said several Texas bar activities were germane to lawyer regulation, including its work to improve diversity in the legal profession.

Oklahoma also had a partial loss when the 10th Circuit at Denver ruled in June 2021 that the plaintiff had plausibly alleged that the Oklahoma Bar Journal improperly used mandatory dues to discuss matters of an ideological nature.

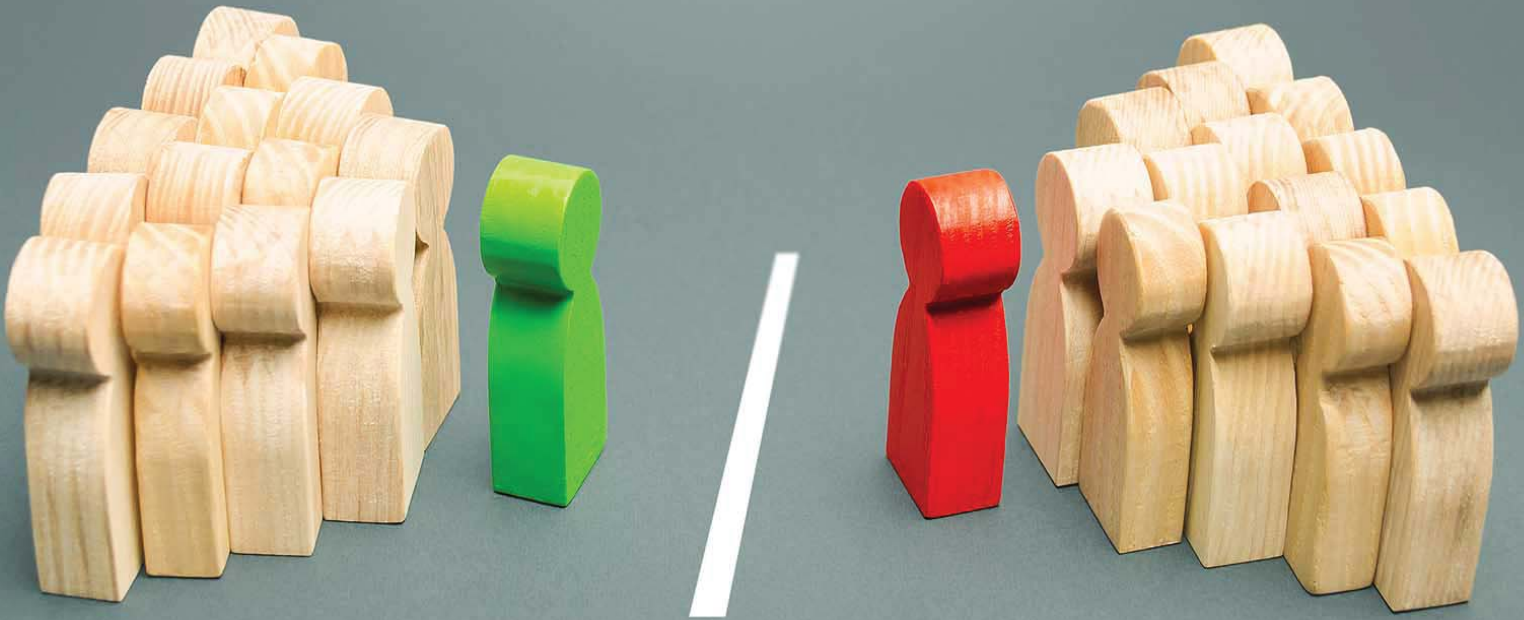


TIME OUT: What drives our wellness-eroding culture of 24-hour availability? According to a recent *Bloomberg Law* survey, a big culprit is those flashing, pinging, buzzing devices we find so difficult to put down.

Among the lawyers who responded, 78 percent either agreed or strongly agreed with the statement "I don't feel like I can disconnect from work because mobile devices mean I'm always available."

High percentages of lawyers said they use their smartphones to work during non-work times, such as "while attending to personal matters" (88 percent) and "during travel for leisure" (78 percent). The most popular response was "other times I'm not at my desk" (89 percent)—which legal analyst Rachael Pikulski says could mean "there's no time at all considered off limits for work."

ADR: Cutting the Cost of Priceless Peace



IT NEVER FAILS TO GET A HUMOROUS RESPONSE from attorneys when the suggestion is made that any party interested in initiating a lawsuit had to be compelled to carry a hot iron bar in their bare hands twenty paces to demonstrate sufficient belief in the merits of their own case before being allowed to file any form of legal complaint.

It seems harsh, and, in reality, it was when a variant of this procedure was used in medieval England—but it is an extreme example of an Alternative Dispute Resolution (ADR) mechanism at work.

Trial by combat is typically something that is mentioned in passing, if at all, in most civil procedure courses. If it is mentioned, reference is usually made to the fact that

the parties to a dispute could basically fight it out, and the stronger party—supported by truth—would somehow prevail.

Variations to actual combat included the ordeal of water, where a priest would invoke a tub of water to not accept a liar. After that, the accused would be lowered in. If the accused floated, guilt was pronounced, as the water would be “rejecting” the liar. If the accused sank, they would undoubtedly drown, yet be judged innocent.

If, however, the parties had set upon some form of trial by combat, each would retire to a local monastery—or similar venue—where they were secluded for anywhere from several days to almost a month, compelled to pray, fast and seek the counsel of a priest, who would repeatedly query them to ascertain if they might want to “settle” instead.

Interestingly, the only point at which a party could withdraw from a trial by combat was only after the actual



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combat had commenced as the dispute could be “settled” any time before that.

Thus were some very early, if disconcerting, forms of ADR.

More Precise Procedure

Fast forward a few centuries when the common law had developed to the point of more precise procedure where potential litigants had more of a choice as to where to take their claims—the Court of Common Pleas, the King’s Bench, the Chancellor of the Exchequer, and so on.

Taking advantage of any one of those forums would generally preclude aquatic immersion or physical violence as a procedural option.

However, burdened by the highly technical forms of writ-based pleading, those courts were still unable to efficiently address or resolve many of the disputes of the day.

Think about the modern concept of easily pleading the breach of a partially performed oral contract. The closest one might be able to in one of those courts was by pleading *indebitatus assumpsit*, wherein the already rigid writ of *assumpsit* would be stretched whenever the situation arose where goods had already been delivered to a defendant who now wanted to be paid.

Again, ADR—in the form recourse to the newer mercantile courts—provided a solution in which the parties would agree to be bound by some variation of what later became nominated as the Law Merchant, with business-savvy judges applying more, realistic real-world commercial norms to resolve disputes.

Thus, what we know as the Uniform Commercial Code was born.

The procedural rules of the Code, though highly technical and sometimes seemingly obtuse, have as their goal the placement of the parties *in equipoise*—that, when properly represented, the small side be on an equal footing with the larger side so that the law can be applied fairly.

That being said, at the end of the day, parties to a civil action usually come away feeling like the whole matter could have been handled better, as several recent studies have revealed that upwards of 70 percent of the parties to non-personal injury actions have stated that, if given the chance with their opposing side, they probably could have worked out a more satisfactory result outside of court.

Moreover, most of those surveyed agreed that the missing factor in a civil action was time—the coin of the realm for a host of practice areas.

Practitioners need to be aware that the cycle time for concluding a civil action often does not mesh with the life cycle of the litigated subject, even if one ends up representing the prevailing party.

Accordingly, consider the merits of some form of ADR as a precursor to filing suit. Particularly in the areas of technology and entertainment, where ADR makes perfect sense.

Technology

Moore’s Law, developed in 1965 and still applicable, though diminished over the years, dictates that the speed of an average CPU—a computer’s central processing unit, it’s ‘brain’—doubles approximately every 18 months.

This means that the shelf life for most software programs is about one year, and is, in fact, often less.

While it is possible to obtain a preliminary injunction, and then possibly a temporary restraining order (TRO), today’s fast-track rules don’t take into account technology life cycle to make civil litigation the preferred forum for resolving disputes where the underlying subject matter surrounds things like software.

Recently, a resolution was sought in a dispute between a technology house and one of its former employees.

The technology house (TechCo) was in the posture of the plaintiff and the former employee—a programmer—was in the posture of the defendant, who had threatened to file a counter-claim.

This dispute arose out of the programmer’s alleged theft of TechCo’s trade secrets while developing a particular piece of software code.

The programmer claimed that there was no theft as he was never an employee, only an independent contractor, as TechCo had retained him under an oral contract.

In addition, the company appears to have never properly protected its proprietary information in the first place, such that it could credibly argue that the information should be subject to trade secret protection.

The programmer was prepared to allege that he was retained by TechCo to develop the specific piece of code in question to allow his own trade secret information to operate with TechCo's existing and contemplated software program.

The counsel for both sides deserve to be complimented as they realized that all parties stood to lose if this matter were not resolved in less than one month.

At the conclusion of a non-binding mediation, it was agreed that each side would release the other—TechCo agreed to a one-time fee approximating one year of what it would have paid the programmer as an employee in return for an exclusive, one-year license to the programmer's proprietary information.

The programmer, in turn, agreed to a very robust set of cooperation obligations for the one-year period to work with TechCo to finalize, debug, and implement the software for any of TechCo's clients who purchased this software.

At the conclusion of the one-year period, both sides agreed to engage in substantive negotiations for the retention

of the programmer as either an employee or consultant, and reduce an agreement covering such into a written form that would include how any of the programmer's subsequent inventions would be treated—TechCo having, for example, the right-of first refusal or work-for-hire, etc.

Importantly, it took only one day to hear both sides, and analyze and craft an agreement acceptable to both sides.

It is doubtful that any court could have compelled such a win-win solution in even one year.

Entertainment

In an entertainment practice, cycle time is important, but equally vital is the availability of genuinely robust arbitral forums. Fortunately, a good portion of the entertainment industry is covered by collective bargaining agreements that provide for ADR—especially arbitration—with neutrals that understand the complexities of the business.

For example, an attorney represents a screenwriter who has gotten the run-around from a quasi-professional producer who has a so-called "housekeeping deal" with a studio in which it basically agrees to seriously consider any and all movie ideas presented by the producer during the term of the agreement.

The client was asked to perform what otherwise might be characterized as some non-substantial edits and the producer is now wanting credit as a co-writer should the client's script get optioned for development by a major studio.


Obviously, a suit might be filed alleging breach of a confidential relationship—and plead a *Desny* claim—in the hopes of getting this producer to give in.

Whatever the case—win, lose or draw—this course of action has the strong likelihood of not only destroying the client's current, albeit imperfect, deal, but marking him as a chronic "suer," thus almost certainly muddying many future meetings with other producers.

A more effective tack would be to take advantage of the Writers Guild of America's arbitration powers, in which the client arbitrates before a panel of three well-qualified writers, and a decision would be reached relatively quickly.

In this particular set of circumstances, the decision would lean in favor of the screenwriter allowing counsel to continue work with the client to move the script through development and, hopefully, onto a pilot format.


Admittedly, technology and entertainment are but two practice areas where ADR really makes sense, but no matter what practice area is in question, bear in mind the time and money that can be saved by both counsel and client when ADR is elected over civil litigation.

Whenever a client is adamant about taking a case to court, it is wise to formulate a litigation budget that captures not only what it will cost to get to—and through—trial, but also how long it will take to have the court render a decision. 

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Retrospective



The SFVBA's 2000 Annual Judges Night was held at the Warner Center Marriott in Woodland Hills.

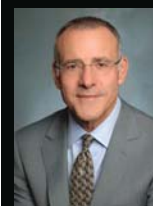
The highlight of the February 17 event was the presentation of the Association's Judge of the Year Award by Past President Mark Blackman to Hon. Michael Farrell, Supervising Judge of the Superior Court's Northwest District (above).

The event also marked the presentation of the Bar's Distinguished Service Award to Hon. Bruce Sotille upon his retirement after 15 years on the Superior Court bench. (below).



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By Craig B. Forry



Sanctions Warranted?: Illegal Disclosures in Family Law Cases

IN THE RECENT CASE OF *Shenefield v. Shenefield*, Mark Shenefield filed a request for order (RFO) with the court, seeking joint legal and physical custody of the child he shares with Jennifer Shenefield.

In his declaration, Mark quoted from and referenced the contents of a confidential, court-ordered psychological evaluation undertaken during Jennifer's previous marital dissolution.

Mark's attorney Karolyn Kovtun filed the paperwork.

Jennifer opposed Mark's request and sought sanctions for violations of the California Family Code, for unwarranted disclosure of the confidential custody evaluation.¹

The court ordered the issue of sanctions to be heard at trial with Jennifer's trial brief detailing her arguments as to why the court should impose sanctions on both Mark and Kovtun. Mark did not file a trial brief.

Following trial, the court issued sanctions against Mark in the amount of \$10,000 and Kovtun in the amount of \$15,000.

Kovtun challenged the sanctions, and a different court heard Kovtun's request to vacate the sanctions imposed against her and denied the request.

On appeal, she argued the court had improperly sanctioned her because:

- Attorneys cannot be sanctioned under the Family Code;²
- The notice she received did not comply with due process standards;
- The court lacked personal jurisdiction over her;



Attorney **Craig B. Forry**, based in Mission Hills, has practiced for 38 years in the areas of family, divorce and real estate law. He can be reached at forrylaw@aol.com.

- The court failed to enforce the safe harbor provision of the Code of Civil Procedure;³ and,
- The court improperly admitted and relied on a transcript of a meeting between Kovtun, Mark, and Jennifer.

The appellate court found Kovtun's arguments meritless, and affirmed the trial court's ruling.

Jennifer and Mark were married and they shared one child.

In 2017, the court issued a domestic violence restraining order against Mark at the request of Jennifer; in September, Mark plead guilty to misdemeanor battery on a spouse.

The court issued a criminal protective order against Mark. Jennifer was given sole physical custody of their child. As before, Carolyn Kovtun was Mark's attorney of record.

Jennifer filed for marital dissolution from Mark in September 2018, and Mark filed an RFO seeking joint legal and physical custody of the couple's child.

In Mark's attached declaration—after detailing allegedly false allegations Jennifer made against her previous husband—Mark wrote: *"Jennifer was ordered to undergo an Evidence Code § 730 evaluation by Dr. Stephen Sparta who suggested that she would do it again if she felt the ends justified the means."*

Mark then explained that the court presiding over Jennifer's previous marital dissolution matter ordered a psychological evaluation, which was performed by Dr. Sparta.

Mark quoted directly from that report for nearly a page of his single-spaced declaration which presented content from Dr. Sparta's evaluation in paragraph 10 of the document, and referenced some of the details again in paragraph 15. Kovtun was still acting as his attorney of record.

Jennifer filed her responsive declaration to Mark's RFO, arguing

that it included an illegal disclosure of a confidential medical evaluation under the Evidence Code and the Family Code.^{4,5}

Her response also noted that Mark had published the contents of the confidential evaluation on Facebook.

The parties appeared in court, which set the matter for a bifurcated trial, and both parties were told the court would determine custody, visitation, and sanctions at trial.

At the trial readiness conference, the court identified issues for trial—custody, visitation, child support, spousal support, and sanctions. No one objected to the litigation of sanctions.

Jennifer filed her trial brief and argued that sanctions were warranted against both Mark and his attorney of record pursuant to the Family Code.⁶

She maintained that Kovtun disclosed the contents of the previous court-ordered custody evaluation *"maliciously, recklessly, and without substantial justification."*

In its Final Ruling, the court found that Mark provided excerpts of the child custody evaluation from a previous dissolution matter. It noted that Jennifer asked the court to impose sanctions and confirmed that it had identified the request for sanctions as an issue for trial.

The court stated that Kovtun had been personally served Jennifer's trial brief, which identified the sanctions as an issue to litigate. The court wrote that

counsel was aware the petitioner would be requesting sanctions related to the unwarranted disclosure of the 730 Custody Evaluation in violation of the state's Family Code, and this request was reiterated in the petitioner's Trial Brief.⁷

It found that Mark and Kovtun had actual notice of the request for sanctions, as well as an opportunity to respond to and oppose the request, and that Kovtun was a seasoned attorney, and as such, should have been aware of the applicable portions of the Family Code.⁸

It also found that she was reckless in filing documentation that disclosed a confidential custody evaluation.

It concluded Kovtun intended for the court to rely on the former custody evaluation from the unrelated case. It also found that she was not a party to the unrelated case under the Family Code, and thus sanctions were appropriate.⁹

The court imposed \$15,000 in sanctions against Kovtun, payable at \$300 per month, starting April 1, 2020, with interest accruing at an annual rate of 10 percent.

The court separately concluded Mark's disclosure of the content from the custody evaluation was unwarranted and without substantial justification, and it imposed monetary sanctions against Mark in the amount of \$10,000.

The Family Code allows a trial court to order a confidential custody


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evaluation when the court determines that doing so is in the best interest of the child.

The corresponding report may not be disclosed to any person outside of the parties to the action, law enforcement, counsel for the child, or if a court orders the disclosure for good cause.¹⁰

The Code states, *"If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party."*¹¹

The monetary sanction should be an amount that deters repetition of the conduct; it may include reasonable attorney's fees, costs incurred, or both, but the sanction *"shall not impose an unreasonable financial burden on the party against whom the sanction is imposed."*

Kovtun's main argument was that the statute does not apply to her because she is an attorney, not a party to the litigation, and the statute authorizes sanctions only for parties.

She argued the plain language excludes attorneys, and the inclusion of attorneys in the statute is not supported by the definitions applicable in family court, which she contends define *"party"* to exclude an attorney of record.

The statute states the party against whom the court may appropriately impose sanction is the *"disclosing party."* The modifying word *"disclosing"* describes which parties are included in the statute, that is any person who discloses the confidential information when doing so is unwarranted.

The plain language of the statute does not limit its application to named litigants; attorneys can make unwarranted disclosures of the confidential information.

The duty imposed by the Family Code requires a party to a dissolution action to be cooperative and work toward settlement of the litigation on

pain of being required to share the adversary's litigation costs.¹²

In addition, the state legislature wanted to deter the disclosure of information contained in child custody evaluations: *"Because parties are ordered to undergo an evaluation, it is imperative that the confidential nature of a report be protected to ensure the full cooperation of those involved and to encourage full disclosure to the professionals."*

Thus, the intent of the Family Code was to establish clear penalties for distributing the information and ensuring that all interested parties are aware of the penalties. The bill sought to ensure that sensitive information obtained for the court remains confidential.¹³

The legislative purpose of the Code was discussed in *In re Marriage of Anka & Yeager*. There, the Appellate Court affirmed the imposition of sanctions against an attorney who violated section 3111 for asking questions in a deposition that elicited information from a child custody evaluation report ordered during a previous marriage dissolution.¹⁴

The Court explained that the attorney's willful disclosure of confidential information protected by statute harmed the opposing litigant and also harmed the entire process of child custody evaluation, implicitly recognizing the need for truthful communications in evaluating a child's best interests.

Kovtun argued that if section 271 does not authorize sanctions to be paid by attorneys, neither does section 3111.

Attorneys are subject to sanctions for engaging in the behavior prohibited by Family Code section 271, like failing to work toward settlement, via the Code of Civil Procedure.¹⁵

Kovtun also argued the definitions applicable in Family Court preclude attorneys from sanctions under the Family Code because, she contended, the Rules of Court, Title Five, and

the Family and Juvenile Rules, define “party” to exclude attorneys of record.¹⁶

The California Rules of Court defines “party” to include “a person appearing in an action,” further explaining that “[a]ny designation of a party encompasses the party’s attorney of record, including ‘party.’”¹⁷

Indeed, the definition of “party” in Title Five is consistent with the definition provided in Title One, which contains the rules applicable to all courts. The Rules of Court defines a “[p]arty” as “a person appearing in an action,” and it also notes that “party” ... “includes the party’s attorney of record.”¹⁸

Thus, Kovtun’s position on this point was incorrect; the Rules of Court do, in fact, define “party” to encompass a party’s attorney of record.

She had contended Jennifer was required to file an RFO because she sought sanctions.

However, when a party to a marital dissolution moves to modify an existing court order, the responding party may file a responsive declaration in which the party may request sanctions in addition to opposing the requested order.

Because a sanction is necessarily responsive to the moving party’s conduct in litigating a motion, allowing a court to consider the moving party’s conduct at the same time as his motion without the need for a separately filed motion for fees also avoids possible duplicative, repetitious pleadings.

In other words, there is no requirement that a party seeking a sanction does so in a separate RFO when the issue can be efficiently and properly handled in conjunction with the original request for order.

Due process requires “notice, an opportunity to respond, and a hearing.” The purpose of due process

is to provide affected persons with the right to be heard “*at a meaningful time and in a meaningful manner.*”

When sanctions are at issue, due process can be satisfied if the court gives a clear warning identifying the anticipated grounds for the sanctions or if those grounds are identified by the opposing party, and the court provides counsel with an opportunity to respond at least orally.

Kovtun contended sanctions were improper because the court did not have personal jurisdiction over her. She argued that personal jurisdiction only attaches when a person is personally served with notice of possible sanctions.



The intent of the Family Code was to establish clear penalties for distributing the information and ensuring that all interested parties are aware of the penalties.”

She misunderstood the source of the court’s authority here as an attorney serves as an officer of the court, generally subject to the court’s control as a person connected with a judicial proceeding before the court.

As the California Supreme Court explained in *Bauguess v. Paine*, under certain circumstances both trial and appellate courts are authorized to order the counsel to pay the opposing party’s attorney’s fees as a sanction for the counsel’s improper conduct.

In doing so, courts draw on equitable power derived from the historic power of equity courts, and the supervisory or administrative powers which all courts possess to enable them to carry out their duties.

It is clear from the court’s discussion that they have the inherent power to punish via the contempt process, which incorporates procedural safeguards, and that the legislature can provide by statute the authority to impose sanctions.

Such is the case here, and the Family Code granted the court the authority to impose sanctions on counsel.¹⁹


Take-Away Lessons

First, a trial court is required to order a confidential custody evaluation when the court determines that doing so is in the best interest of the child.

The corresponding report may not be disclosed to any person outside of the parties to the action, law enforcement, counsel for the child, or if a court orders the disclosure for good cause.

Should the court determine that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party.

The California Family Code requires a party to a dissolution action to be cooperative and work toward settlement of the litigation on pain of being required to share the party’s adversary’s litigation costs.²⁰

In short, an attorney, as an officer of the court, is generally subject to the court’s control as a person connected with a judicial proceeding before the court. 

¹ Family Code §§ 3111, subdivision (d) and 3025.5.

² *Id.* § 3111.

³ Code of Civil Procedure section 128.7.

⁴ Evidence Code 730.

⁵ Family Code §§ 3111 and 3025.5.

⁶ *Id.* § 3111, subdivision (d).

⁷ *Id.* § 3111(d).

⁸ *Id.* §§ 3025.5 and 3111, subdivision (d).

⁹ *Id.* § 3025.5.

¹⁰ *Id.* § 3111, subdivision (a).

¹¹ *Id.* § 3111, subdivision (d).

¹² *Id.* § 271.

¹³ *Id.* § 3111, subdivision (d).

¹⁴ *Id.* section 3111, subdivision (d).

¹⁵ Code of Civil Procedure § 128.5.

¹⁶ Family Code § 3111.

¹⁷ California Rules of Court, rule 5.2(b)(6).

¹⁸ *Id.* rule 1.6(15).

¹⁹ Family Code § 3111.

²⁰ *Id.* § 271.

By Mark S. Shipow



VALLEY COMMUNITY LEGAL
FOUNDATION

Dedicated Personified: The Professionals Behind the VCLF

FOR MORE THAN 20 YEARS, THE VALLEY Community Legal Foundation (VCLF) has served as the charitable service arm of the San Fernando Valley Bar Association.

It takes hard work by many individuals for it to accomplish its mission and we get things done because of the commitment of the volunteers who make it all happen.

So this month, I would like to introduce you to some of the officers and directors who help run VCLF—people who, like you, are dedicated professionals.

JOY KRAFT MILES PRESIDENT

Joy is serving her third term as President of the VCLF. In addition to guiding the foundation as a whole, she has served on numerous specific projects related to student scholarships and legal education.



Joy is a California State Bar Certified Family Law Specialist and is an elected SFVBA Trustee. Joy has been driven throughout her life to pursue social justice through education and giving back to the community.

PATRICIA MCCABE VICE-PRESIDENT, GRANTS

Patty has been a supporter and volunteer of the VCLF for 20 years and is proud to be a Past President of the organization. Over the years, she has helped provide VCLF scholarships to hundreds of students to further their education.



She also has been instrumental in administering VCLF grants to community programs in Valley to foster a greater understanding of, and access to, the justice system.

Patty's law firm represents disabled individuals who need assistance with disability benefits, including Social Security, Medicare/Medi-Cal, State Disability Insurance, and veteran's benefits.

HON. VIRGINIA KEENY VICE-PRESIDENT, SCHOLARSHIPS

Judge Keeny has served on the VCLF Board for many years, administering its student scholarship program, overseeing the VCLF's award of thousands of dollars in scholarships to help students pursue their dreams of pursuing law-related careers.

Since her appointment in 2012 to the Superior Court, Judge Keeny first served in a family law courtroom and now presides over civil assignment cases in Van Nuys.



HON. FIRDAUS F. DORDI CO-VICE-PRESIDENT, EDUCATION

Judge Dordi has been a judge since 2017 and currently presides over a Family Law courtroom in Van Nuys.

He has been leading the VCLF's Education programs for three years, including the development of the curriculum and training for the Foundation's highly regarded Constitution & Me program, in which lawyers and judges engage high school students in discussions concerning prescient constitutional issues.



The program has been hugely popular with San Fernando Valley high school students and has proved to be a great success.

SARAH WEIL

CO-VICE-PRESIDENT, EDUCATION

As Co-Vice President of Education, Sarah assists Judge Dordi on the *Constitution and Me* program by coordinating between the VCLF and local schools.

Sarah has been a Deputy Public Defender for 14 years and currently works in the Los Angeles Superior Court's Van Nuys Felony Division.



DEBORAH CHODOS

VICE-PRESIDENT, PUBLIC RELATIONS & MARKETING

Deborah is serving her third term as VP of Public Relations and Marketing for the VCLF, spreading the message about all of the Foundation's excellent projects.

A highlight has been helping present the courtroom drama *Defamation* for middle and high school students.

Deborah has a successful personal injury law practice in Encino.



TERRI PECKINPAUGH-AGNEW

SECRETARY

Terri has been an active member of the VCLF for many years, serving as Secretary and, recently, as a Co-President.

She also assists with all of the Foundation's many community-related projects. Terri is vice-president of Leavitt Insurance Brokers and has worked in the insurance industry for over 40 years.

She also is owner of Muddy's BBQ & Catering, a mobile wood-smoked BBQ catering business in Canoga Park.



DAVID NADEL

TREASURER

David is a Certified Public Accountant with a busy private practice.

He has more than 30 years of experience as a CPA and is a member of both the American Institute of CPAs and the California Society of CPAs.

He has professionally maintained the Foundation's accounting records for many years.



YURI ABERFELD

BOARD MEMBER

Yuri is the CEO of IT Support LA, a Woodland Hills-based IT services and cybersecurity firm that specializes in providing technology solutions for the legal community.

Yuri joined the Board to ensure the technology needs of the Foundation are met.



HON. MICHAEL R. AMERIAN

BOARD MEMBER

Judge Amerian currently presides over a Los Angeles Superior Court Family Law courtroom in Van Nuys.

Born and raised in the San Fernando Valley, Judge Amerian is dedicated to assisting the VCLF in enhancing educational opportunities for the Valley's next generation of attorneys.



ANGEL BENOUN

BOARD MEMBER

Angel has supported the foundation in many ways, particularly in helping launch the VCLF's *Constitution & Me* Program.

Angel has been a realtor since 1989, specializing in real estate issues arising in the areas of family law, probate and trusts.



STEPHEN T. HOLZER

BOARD MEMBER

Stephen is a shareholder at Lewitt Hackman Shapiro Marshall & Harlan in Encino. His practice focuses on representing corporations with environmental issues.

Stephen was president of the SFVBA in 2002-2003 and served as President of the VCLF 2008-2010.

Having served on the VCLF Board for almost two decades, Stephen finds it rewarding to help educate the public about the legal profession and to help students who want to become part of the profession.



MICHAEL G. KAPLAN

BOARD MEMBER

Michael is a Certified Public Accountant at Neumeister & Associates, LLP.

His professional practice is limited to financial forensics and business valuation and is called upon regularly to testify in court as an expert witness.

In addition to supporting the VCLF, he also serves on the boards of The K.E.N. Project and the Congregation Or Ami in Calabasas.



KEVIN KANOONI**BOARD MEMBER**

Kevin joined the VCLF Board in January 2022 and is eager to participate and help grow the VCLF reach its full potential.

Kevin is an attorney with K.P. Roberts & Associates and is primarily engaged in civil litigation, focusing on employment litigation and general business litigation. He also assists business clients in transactional matters.

**ALAN E. KASSAN****BOARD MEMBER**

Alan is a senior partner at Kantor and Kantor and has over 30 years of experience in representing plaintiffs whose insurance benefits have been denied.

Alan is a Past President of the SFVBA and has actively supported the VCLF as a Board member. He has also served the community as a Judge Pro Tem and volunteer mediator.

**MINYONG LEE****BOARD MEMBER**

Minyong practices family law at Neighborhood Legal Services of Los Angeles County, representing survivors of domestic violence and sexual assault.

She has a heart for serving marginalized communities and advocating for greater access to justice. Minyong joined the Board of the VCLF this year hoping to extend the work she does at the NLSLA to the Valley, particularly to high school students and their families.

**JERRY LEVEY****BOARD MEMBER**

Jerry is the President of JL Levey Associates, a political, labor, and healthcare consulting firm.

Currently, Jerry is a Commissioner on the City of Los Angeles' Innovation and Performance Commission, and



serves on multiple organizations supporting the area's Jewish community.

As a VCLF Board member, Jerry has brought in several local government leaders to speak to the Board about current issues.

ETAN Z. LORANT**BOARD MEMBER**

Etan has been practicing law in the San Fernando Valley for over 35 years. His practice consists of civil litigation including business litigation, civil rights, employment law and personal injury.

A long-standing member of the VCLF Board, Etan has held numerous posts, including president and has also served as an officer on numerous other non-profit Boards, including the Southwestern School of Law Alumni Association.

**KIRA S. MASTELLER****BOARD MEMBER**

Kira is an estate planning/trust administration attorney and shareholder at Lewitt, Hackman, Shapiro, Marshall & Harlan.

She has held past positions as VCLF co-president, president of the SFVBA, and Chair of the Los Angeles County Bar Association's Trust & Estates Executive Committee.

Over the past five years as a VCLF Board Member, she has enjoyed bringing learning and participatory opportunities to students who are interested in legal and law enforcement careers.


**AMANDA M. MOGHADDAM****BOARD MEMBER**

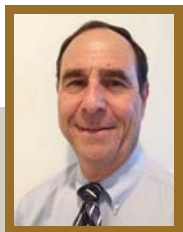
Amanda is a claims attorney at Lawyers' Mutual Insurance Company, and a Certified Specialist in legal malpractice law. She has served as a VCLF Board member since 2020.

She is also active with the SFVBA, currently serving as the organization's Treasurer and on its Membership & Marketing Committee, Mock Trial Competition Committee, Inclusion & Diversity Committee, Women's Law Section, and New Lawyers Section.



The VCLF is looking forward to an exciting year of giving back to our legal community. We welcome your participation in our efforts.

Please visit thevclf.org to become involved, donate money, or obtain more information. 



Commercial litigation attorney **Mark Shipow** has served on the Board of the VCLF since 2014 and has served as both the organization's President and VP of Public Relations & Marketing. He previously served as a Trustee of the SFVBA and can be reached at mshipow@socall.rr.com.



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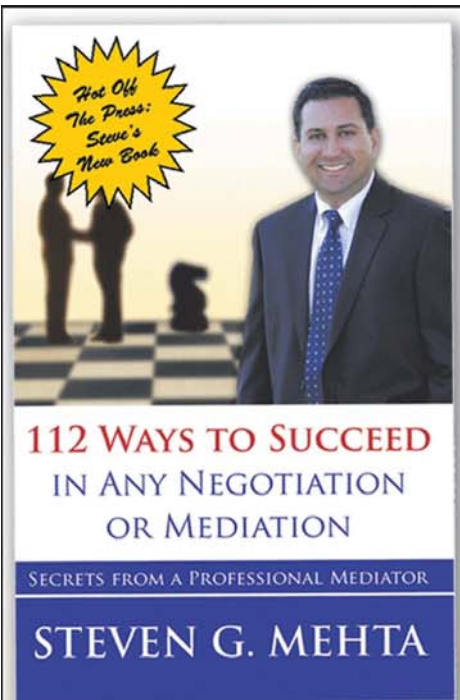


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Dear Phil

Choosing Between Equals

Dear Phil,

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

*Signed,
Stalled*



DEAR STALLED: Expanding and hiring is always exciting but often presents these challenges. Deciding between two equally qualified attorneys is a great problem to have, but of course tough decisions must be made from time to time.

Firm culture is often something that is heavily overlooked in interviews and selecting candidates.

While both candidates may look great on paper you need to consider the fact that you and your staff are going to interact with these people on a daily basis and you want to choose someone that fits in well, and identifies with your firm's culture, just as much as the fact that they are qualified for the position.

For instance, selecting a more personable attorney may help you

develop a mentoring program for younger attorneys. When I choose candidates one thing I always ask myself is: would I or my colleagues like to socialize with this person outside of work?

If not, it doesn't mean they don't get the job, but it is something that gets considered in ensuring that the firm is well balanced.

Regardless of the situation, when looking at two equally qualified candidates, you need to look beyond the normal metrics of how qualified the lawyer is and focus on who the person is.

Best,

Phil

Dear Phil is an advice column appearing regularly in *Valley Lawyer Magazine*. Members are invited to submit questions seeking advice on ethics, career advancement, workplace relations, law firm management and more. Submit questions to editor@sfbva.org.



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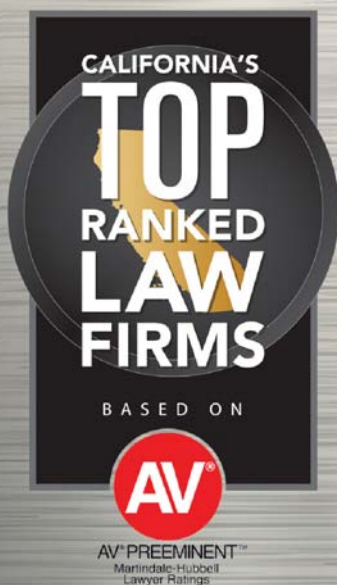
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