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SEPTEMBER 2022 • $5

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Entertainment Guild & Union Agreements: Back to the Future

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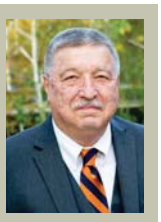
Durable Friendships

MICHAEL D. WHITE
SFVBA Communications Manager



michael@sfvba.org

ONE OF MY MOST DURABLE memories of growing up in the San Fernando Valley was the time I spent under my house meeting new friends.

Let me explain. I grew up in a house built shortly after the end of World War 2 by people who, for some sick reason, eschewed the concept of central heating or air conditioning. By that, I mean, we had neither.

This dual lack of amenities made the winters—and, yes, it does get cold here, perhaps not by Alaskan standards, but still…cold—a race between my older brother and I as to who could lay claim to the most quilts and who would freeze, and the summers into a struggle to keep my vital organs from melting and running into my sneakers.

It is to the latter that I refer. With temperatures frequently eclipsing triple digits, I would grab a sandwich—tuna salad on Fridays—a Coke or Dad's Root Beer, and a flashlight, to make my escape from the heat through a trap door in the floor of our hall closet.

Accompanying me on my own version of Narnia were a company of friends that have lasted a lifetime. Laying on the cool packed earth under our house, I met friends that have remained close to this very day—Oliver Twist and Robinson Crusoe, Ray Bradbury and Herman Melville, the Count of Monte Cristo and Henry V, A. A. Milne and Joseph Conrad, and so many, many more.

It was, perhaps, "the best of times, the worst of times," but never, ever a waste of time. My friends graciously taught me the power of words—how every author writing in the English language has molded the same 26 letters into words and sentences and paragraphs and countless books that, over generations, have conveyed to countless millions hours of escape that evoke timeless emotion and imagination.

I owe them all a great debt that can never be repaid. They extended their hand of friendship to a rather cumbersomely large dyslexic kid with a lisp and poor eyesight. They unquestioningly took me in and showed me that words mean things and are something we should never be afraid of. They gave me faith.

Their words, their gifts are ageless, enduring, and indestructible.

At the conclusion of Charles Dicken's classic *The Tale of Two Cities*, the character Sydney Carton, caught up in the grotesque barbarity of France's Reign of Terror, shared an almost prophetic vision before he sacrificed himself on the guillotine for the woman he loved.

"*I see a beautiful city and a brilliant people rising from this abyss*," said Carton. "*And, in their struggles to be truly free, in their triumphs and defeats, through long years to come, I see the evil of this time and of the previous time of which this is the natural birth, gradually making expiation for itself and wearing out.*"

Faith, hope, and a vision of a better tomorrow. A noble message for any time, any people.

Met a new friend or renewed an old friendship lately? You don't have to crawl under your house to do it. Remember, library cards are free, and Kindle is only a few clicks away.

CALENDAR

SEPTEMBER 2022

SUN	MON	TUE	WED	THU	FRI	SAT
NATIONAL HISPANIC HERITAGE MONTH (September 15-October 15)				ZOOM MEETING Membership and Marketing Committee **6:00 PM** **1**	**2**	**3**
4	**5**  SFVBA OFFICES CLOSED	ZOOM MEETING Editorial Committee **12:00 NOON** **6**	**7**	SAN FERNANDO VALLEY BAR ASSOCIATION *Meet the Candidates Don't Forget to Vote!* BOARD OF TRUSTEES ELECTION SEPTEMBER 9, 2022 **9**		**10**
11	**12**	WEBINAR Probate and Estate Planning Section ***Things That Go Bump in the Night: The Methods and Procedures of Fiduciary Accountability*** **12:00 NOON** Presenters Nancy Reinhardt and Matthew Kanin will explore judicial supervision and intervention in the internal affairs of trust. This presentation will explore the most commonly-used procedural tools for trustee accountability, and the common situations that lead to these proceedings, with an eye as to how disputes between trustees and beneficiaries can be avoided. (1 MCLE Hour) **13**	**14**	**15**	WEBINAR Bankruptcy Law Section ***Innocent Spouse's Liability*** **12:00 NOON** J. Scott Bovitz and Bankruptcy Judge Barry Russell will discuss an innocent spouse's liability for the fraud or misdeeds of her not-so-nice spouse under 11 U.S.C. §523. This topic will be considered by the U.S. Supreme Court in the 2022/2023 session. (1 MCLE Hour) **16**	Our Sister Organization: Santa Clarita Valley Bar Association ***Special Guided Tour of Battleship USS Iowa*** **10:00 AM** **PORT OF LOS ANGELES** $20 per person. Children ages 3-11, $15. RSVP: info@scvbar.org See ad on page 25 **17**
18	ZOOM MEETING Mock Trial Committee **6:00 PM** **19**	WEBINAR Taxation Law and Business Law Sections ***The Employee Retention Tax Credit*** **12:00 NOON** Attorney/CPA David Connelly will discuss the refundable credit available to employers under the Employee Retention Credit (ERC) program. David will discuss which employers qualify for this credit. How the benefit is computed and how to claim it. A must attend for all professionals who represent business owners/employers. (1 MCLE Hour) **20**	**21**	WEBINAR Probate and Estate Planning Section ***Casual Al Fresco Dinner*** **5:30 PM** **SFVBA COURTYARD** Exclusive to SFVBA Probate and Estate Planning Members Only! Free to our Current Section Members! See ad on page 20 **22**	**23**	**24**
25 	**26**	**27**	**28**	**30**		

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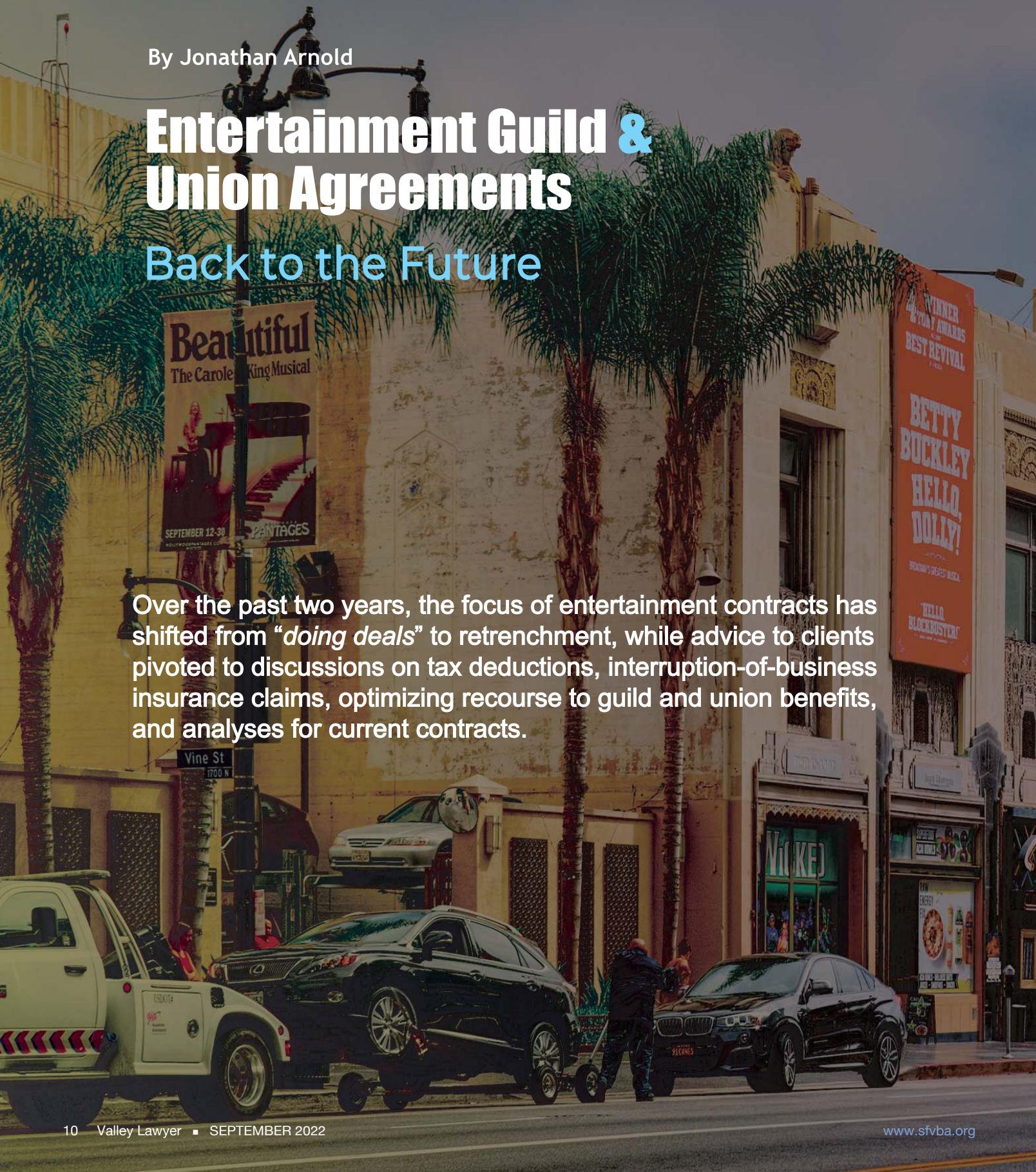
By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 19.

By Jonathan Arnold

Entertainment Guild & Union Agreements

Back to the Future



Over the past two years, the focus of entertainment contracts has shifted from "*doing deals*" to retrenchment, while advice to clients pivoted to discussions on tax deductions, interruption-of-business insurance claims, optimizing recourse to guild and union benefits, and analyses for current contracts.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HOLLYWOOD HAS NOT BEEN spared by the impact of the pandemic. Nearly two years ago, it called into existence a near-complete halt to motion picture and television production, with correlative work diminishment for practically everybody in the business—including counsel.

Over the past two years, focus shifted from "*doing deals*" to retrenchment; advice to clients pivoted to business organization analysis, discussions on tax deductions, interruption-of-business insurance claims, optimizing recourse to guild and union benefits, and analyses for current contracts—with more discussions, and development, on *force majeure* than could have previously been imagined.

In March of 2020, just three days before the first COVID lockdown, this writer was happily meeting at a local microbrewery with one of his writer-director clients to celebrate the successful closure of a contract for a substantial film distribution deal.

Now, at the time of this writing less than three years hence, it feels like ten years have transpired.

Admittedly, these have been trying times for all of us who work in what's known in Los Angeles as *The Business.*

Thankfully, though, embodied within the entertainment industry are two key trends which have both helped sustain operations through everything that COVID has wrought, and are now pointing the way to the future.

An Evolutionary Process

The first of these is the ever-constant technological evolution that is a hallmark of Hollywood.

From the very creation of moving pictures, to the addition of sound, to the transition to color, to digital editing, to computer rendering, the entire industry has been one of the major early adopters, and then integrators, and then innovators of practically every new technological development for more than a century.

Interestingly, the use of the Internet is something that Hollywood had been working on long before the pandemic.

In fact, it could be said that the pandemic has proved to be something of a saving grace, compelling the major players to take streaming seriously and really grapple with all of the new distribution modalities, keeping audiences—albeit, those at home—entertained, and revenue rolling in.

Most importantly, this digitization and transmission of content has prepared the way for online distribution to now stand on an equal footing with all that theatrical releasing is and, at the same time, create a revenue pool that if adequately leveraged by the guilds and unions will be a font of financial gain for all.

The second of these is the true work ethos that has always been embodied in entertainment. Like sports, the simple fact is that all aspects of entertainment, individually and collectively, require dedication and talent.

Yes, there is the mangy exhibitionism that makes the news, but the real story is more mundane—it's called work.

And this work has been supported by that truism that Hollywood is a "*company town*"—a phrase which many take to mean the supposed control exercised by the major studios, but is really about what has been, and continues to be, the backbone of *The Business*—the myriad guilds and unions, and their respective collective bargaining agreements, which set the terms and conditions for this work.

From a normative standpoint, these agreements have effectively harmonized labor-management relationships.

Doing so has protected labor and, at the same time, kept entertainment production highly efficient, maintaining the focus on operations, supporting technological innovation, and allowing for the smooth integration of new technologies with a minimum of business disruption.

Exhibit No. 1

If ever an economist needed proof of the ubiquitous benefits of both unionization and self-regulation, the various guild and union agreements could easily serve as exhibit No. 1.

Entertainment is—for California in particular, and the U.S. in general—a major industry with "*the American film and television industry supporting 2.2 million jobs, paying out $192 billion in total wages, and comprising more than 110,000 businesses…*".[1]

Abroad, the stabilizing influence of guild and union agreements have supported the entertainment industry being one of the true success stories of the balanced, free-market economy.

In 2015 alone, the U.S. entertainment industry generated approximately $18 billion in exports.[2]

Additional benefits that have accrued from the collective bargaining agreements include wage stabilization, increased physical safety—without making light of the *Twilight Zone* tragedy and the recent Rust shooting, as they are true outliers—and the law's timely response to sharp practices.

Abusive agents?

The California legislature responded

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with the Talent Agency Act, embodied in the Labor Code.[3]

This Act was promulgated requiring talent agents to be licensed, thereby protecting performers from being preyed upon by unscrupulous individuals.

In addition, this law set out that only licensed agents can take a share of their performer-client's work, provided that the agent actually procured the work.[4]

This means that a manager is not entitled to a percentage of an entertainer's income unless the manager is a licensed talent agent and actually procured the "*gig*" for their client. Abuse of child actors? The Hollywood lobby came to the fore with *Coogan's Law*, which is best summed up by the Screen Actors Guild (SAG):

> "*This law is named for famous child actor Jackie Coogan. Coogan was discovered in 1919 by Charlie Chaplin and soon after cast in the comedian's famous film, The Kid. Jackie-mania was in full force during the 1920s, spawning a wave of merchandise dedicated to his image.*
>
> "*It wasn't until his 21st birthday after the death of his father and the dwindling of his film career that Jackie realized he was left with none of the earnings he had work so hard for as a child. Under California law at the time, the earnings of the minor belonged solely to the parent*."[5]

In line with this, this law empowers courts to require that a portion of a minor's earnings be set aside in a special trust account. This law is currently codified in both the Family Code and the Labor Code.[6] [7]

Regulation of Non-Standard Working Hours

California's Industrial Welfare Commission promulgated *Wage Order 12—Wages, Hours And Working Conditions In The Motion Picture Industry* specifically for Hollywood and entertainment workers.

Akin to something of a safe harbor regarding non-standard working hours, it mandates that, regarding Alternative Workweek Schedules:

> "*No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation.*
>
> "*All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1½) times the employee's regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee's regular rate of pay*…."[8]

It could be said that one of the plotlines of the entertainment story is that artistic working hours are necessarily different than standard factory-based shifts, requiring a unique legal framework, and this *Wage Order* supports that.

Because entertainment production requires robust cooperation among and between many technically trained people and corporate organizations, there is a tradition that respects what is today known as "*win-win*" negotiation.

More specifically, self-interest plus mutual interest serves as the cornerstone for everything from simple handshake deals to major guild and union collective bargaining agreements.

Scorched-earth tactics may make for good headlines, but rarely work in the mid- or long-term, making any regime that rewards outsized egos is a recipe for economic disaster.

Why? Because it has been borne out for centuries that even victory requires bilateral consent for benefits to obtain—"*Qui vicit non est victor nisi victus fatetur*."[9]

Roughly translated, the victor is not truly the victor unless the vanquished admits it.

Applied to Hollywood, according to one of Variety's top journalists, A.D. Murphy, "*[f]rom acquisitions of literary properties to final theater bookings, virtually every phase of the industry's operations is negotiated and this, contrary to widespread opinion, implies that personal trust and high standards of professional integrity largely prevail*."[10]

Five Easy Pieces

This approach has informed a host of the successful components of most, if not all, of Hollywood's guild and union collective bargaining agreements, with a normative result of segmentation by industry role(s) so that the requirements of production work are properly coordinated based on the specific work tasks of various parties—directors, writers, actors, cinematographers, set designers, sound engineers, and so on, for example.

Practically each one of these speaks to what entertainment guild and union counsel call the "*Five Easy Pieces*"—wages and, where applicable, royalties, and working hours, including meal periods; health and welfare; pensions; training and apprenticeships; and, arbitration.

Given this very broad scope of these contractually set employment terms and conditions, it is no wonder that entertainment practitioners refer to the aggregate of these agreement as akin to an industry-specific form of private international law.

As an example, one of the most powerful guilds, the Directors Guild of America (DGA), contemplates arbitration.

As to the scope of arbitrable matters, the DGA's Basic Agreement (BA) provides that:

> *The following matters shall be subject to arbitration: All grievances, disputes or controversies over the interpretation or application of the BA and, in addition, all grievances, disputes or controversies over the interpretation or application of any Employee's personal services contract or deal memo with respect to (a) credit provisions, (b) cutting rights provisions, (c) preview rights provisions, (d) creative rights provisions (including, without limitation, all consultation and/or approval rights of any kind relating to any motion picture), (e) money claims for unpaid compensation seeking $550,000 or less, (f) cash per diem payments for Employees only; provided, however, that grievances, disputes or controversies over the interpretation or application of any personal service contract or deal memo shall not be arbitrable if they relate to (1) perquisites such as per diem (except as provided above), travel arrangements, secretarial services and the like, (2) compensation measured by net or gross proceeds, or (3) other provisions not referred to in subparagraphs (a) through (f) hereinabove.*[11]

As clearly shown, this arbitration provision is quite robust, both in terms of its breadth and depth. Furthermore:

> *Arbitration Exclusive Remedy Arbitration hereunder shall be the exclusive remedy in connection with claims for violation by the Employee, Guild or the Employer of the provisions of the BA and of the arbitrable provisions of any personal service contract or deal memo other than claims for compensation*.[12]

This carve-out for claims in connection with unpaid compensation is typical and similar such provisions in the other guild and union agreements read in much the same way.

Importantly, these well-known ADR provisions have been in place in forms such as this for over a half century, and their operation is what has kept disputes that arise resolved in a timely and efficient manner.

Another of the "*Five Easy Pieces*" concerns training and apprenticeships, something for which entertainment guilds and unions are also quite well known.

The International Alliance of Theatrical Stage Employees (IATSE), Local 800—most commonly known as the Art Director's Guild—works closely with Contract Services, a training consortium funded by studios and guilds to provide training for a host of skilled set workers.

As an example, the Set Designer Training Series provides that:

> "*Pursuant to the Local #800 agreement, a Junior Set Designer wishing to upgrade to the classification of Set Designer on the Industry Experience Roster is required to complete the Set Designer Training Series, consisting of six classes totaling 24 hours of instruction, in addition to satisfying the work experience requirements set forth in Paragraph 68(a)(1). This training series is administered by Contract Services.*"[13]

Because directors bear primary responsibility of realizing the successful script to the proverbial big screen, they and their delegates—including assistant directors, unit production managers, and others—form one of the industry's vanguards.

Accordingly, the DGA Basic Agreement reflects the cutting edge of industry segmentation.

This is realized by correlating the scope of employment to the various types of production, currently contemplating the following segmentation: commercials; documentary; experimental; the Freelance Live and Tape TV Agreement, or FLTTA; industrial; low-budget; network; new Media; and, reality.

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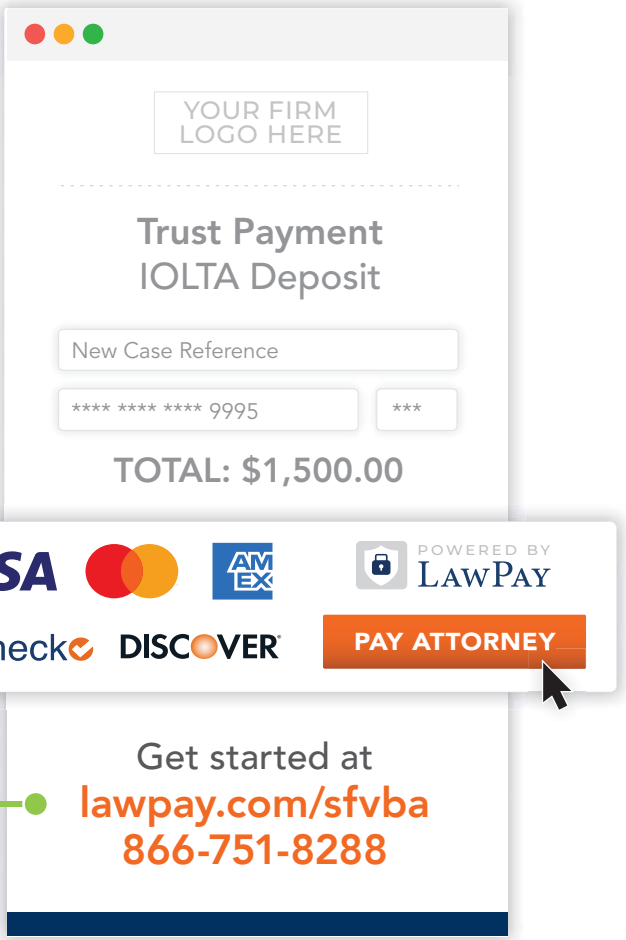

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And this segmentation is reflected in the various Rate Cards:

HIGH BUDGET SVOD PILOTS
7/1/22 to 6/30/23

Rates Effective July 1, 2022 to June 30, 2023	HIGH BUDGET SVOD PILOTS (20 MILLION OR MORE SUBSCRIBERS)				ALL OTHER HIGH BUDGET SVOD PILOTS (FEWER THAN 20 MILLION SUBSCRIBERS OR LOWER BUDGET TIERS)			
	Pilots 20-35 Minutes budgeted at $2,100,000 or more	Pilots 36-65 Minutes budgeted at $3,800,000 or more	Pilots 66-95 Minutes budgeted at $4,000,000 or more	Pilots 96 Minutes or more budgeted at $4,500,000 (plus $2,250,000 for each additional 35 minutes or portion thereof) or more	Pilots 20-35 Minutes budgeted at $1,030,000 or more	Pilots 36-65 Minutes budgeted at $1,750,000 or more	Pilots 66-95 Minutes budgeted at $3,000,000 or more	Pilots 96 Minutes or more budgeted at $3,000,000 or more (plus $2,250,000 for each additional 35 minutes or portion thereof)
PROGRAM RATE	$84,609	$112,807	$140,998	$197,410	$50,765	$67,684	$84,599	$118,446
INCLUDED DAYS	14 days	24 days	34 days	50 days	14 days	24 days	34 days	50 days
COMPENSATION FOR DAYS WORKED BEYOND GUARANTEE	$6,043 day	$4,700 day	$4,147 day	$3,948 day	$3,626 day	$2,820 day	$2,488 day	$2,369 day
DAILY EMPLOYMENT WHERE PERMITTED	$7,554 day	$5,875 day	$5,184 day	$4,935 day	$4,533 day	$3,525 day	$3,110 day	$2,961 day

SVOD, stands for Subscription Video On Demand–*Netflix*, for example–and this above Rate Card breaks out the new norms of this form of new media.[14]

For counsel, Rate Cards are a ready reference to accepted custom-and-practice in the industry, even for non-union projects.

While directors bring the script to the screen, it all starts with the script, which, in turn starts with the screenwriter(s); hence, the Writers Guild of America (WGA).

Reflecting the emerging primacy of all forms of Video On Demand (VOD), and taking into account the growth of this market, the WGA has negotiated residuals for writers whose work is used in High Budget SVOD (HBSVOD), "*[f]or programs covered by the 2020 Minimum Basic Agreement (MBA), there is one rate for writing between May 2, 2020 and May 1, 2021, and an increased rate for writing that occurs in the second and third year of the 2020 MBA.*"[15]

Specifically:

HBSVOD Residual Bases - 2017 and 2020 MBA			
	2017 MBA	5/02/20-5/01/21	5/02/21-5/01/23
20-35 Minutes			
Story	$5,649	$6,073	$6,528
Teleplay	$9,173	$9,861	$10,601
Story & Teleplay	$14,119	$15,178	$16,316
36-65 Minutes			
Story	$10,264	$11,034	$11,862
Teleplay	$17,778	$19,111	$20,544
Story & Teleplay	$25,663	$27,588	$29,657
66-95 Minutes			
Story	$15,426	$16,583	$17,827
Teleplay	$27,345	$29,396	$31,601
Story & Teleplay	$38,567	$41,460	$44,570
96 Minutes or More			
Story	$20,216	$21,732	$23,362
Teleplay	$36,269	$38,989	$41,913
Story & Teleplay	$50,541	$54,332	$58,407

If we can envision the scope of the industry as Act I and the foregoing information in connection with various aspects of the guild and union collective bargaining agreements as Act II, then Act III is now approaching—the natural expiry, and related need for renegotiation, of many of the collective bargaining agreements over the coming years.

The cast, as it were, for this will be quite large, but there are essentially three key players—each guild or union's members, the studios, and the audiences, from which the income ultimately derives.

Renegotiation and Collaboration

Traditionally—and despite what is often mis-characterized by the media—the renegotiation of collective bargaining agreements is where these key players are expected to collaboratively adjust applicable terms and conditions, setting the stage for how the entire industry will function for approximately the next decade.

There are currently three key areas of contention that will hopefully be adjusted, all of which need to take the audiences into account; specifically, the new ways media is distributed—read: VOD, and all of its variants.

The first relates to pensions. Macroeconomically, the bell curve shows that the baby boom generation is eating through the various guild and union pension funds.

This, combined with fewer new members than during the heyday of the 1970s through the 1990s, is causing concerns as many current guild and union members are reaching retirement age and will be drawing their pensions.

Second are the costs associated with healthcare with many plans administered by the guilds and unions, while third is the stake in streaming revenue, which, in reality, may well prove to generate more revenue than sales from theatrical releases, provided that the studios and producers can take full advantage of these forms.

Currently, it seems that they can, and no doubt the guilds and unions will want a share of this. At present, and given that the DGA and WGA already contemplate royalty payments to their members, it seems that they are well poised to continue negotiations with the studios and producers to continue this. Doing so will benefit all as revenue to the guilds and unions, which is ultimately payable to the guild and union members, will help refund the various pensions.

Thankfully, the parties are well poised to achieve this. For example, negotiators for the DGA currently include film and television directors, as well as Assistant Directors (ADs), Unit Production Managers (UPMs), and Associates, and will include ADs, UPMs, Associate Directors and Stage Managers, all of whom are intimately familiar with both entertainment production, and intensely aware of what the studios and producers require. The stage is truly set for win-win negotiations.

Related to this is the fact that what had looked to be an industry-wide work stoppage was avoided in late 2021—with one of the major contentions being the overly long working hours undertaken by many productions—when the IATSE took a tough, anti-divide-and-conquer stance, supported by the DGA, the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), the Writers Guild of America, East (WGAe), the Writers Guild of America, West (WGAw), and the Teamsters.

The beneficial flexibility component is currently manifest; if all parties can take advantage of what streaming has to offer, they can avoid a similar set of problems that plagued Hollywood in the 1970s-1980s, when the studios and producers were too

intransigent about providing an equitable amount of the royalties generated from television syndication, and later video sales.

This led to strikes that could have easily been avoided. Thankfully, via the specific amendment mechanism known as *Sideletters*, parties to the various collective bargaining agreements can beneficially work out issues in a mutually agreeable fashion.

An example of such a *Sideletter* sent to the Alliance of Motion Picture and Television Producers, Inc:

Alliance of Motion Picture and Television Producers, Inc.
15301 Ventura Boulevard, Building E
Sherman Oaks, California 91403-5885

Re: Programs Produced for New Media

Dear Ms.

When the parties entered into the 2014 negotiations, they mutually understood that the economics of New Media production were uncertain and that greater flexibility in terms and conditions of employment was beneficial. The parties understood that if one or more business models developed such that New Media production became an economically viable medium, then the parties would mutually recognize that fact in future agreements.

During the 2017 negotiations, in recognition of emerging subscription video-on-demand services exhibiting high budget dramatic productions, the parties agreed to modify the terms and conditions for "high budget" dramatic productions made for subscription consumer pay New Media platforms (hereinafter "subscription consumer pay platforms") as provided in Sections D. and E.3. below.

These two paragraphs show how readily new media, and new markets, can become timely integrated into collective bargaining agreements.[16]

A look the foregoing norms, as reflected on various Rate Cards and Side Letters shown above, have already reveled the way forward for successful negotiations.

Stay tuned.

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[1] https://www.motionpictures.org/research-docs/the-american-motion-picture-and-television-industry-creating-jobs-trading-around-the-world-3/.
[2] Letter from Anissa Brennan, Senior Vice President, Motion Picture Association of America, Inc., to Ed Gresser, Chair of the Trade Policy Staff Committee, Office of the U.S. Trade Representative (June 12, 2017) (Policy Filings of the Motion Picture Association of America, Inc).
[3] California Labor Code § 1700, et seq.
[4] cf., Real estate's "procuring cause."
5 https://www.sagaftra.org/membership-benefits/young-performers/coogan-law. 6 California Family Code §§ 6750-6753.
[7] California Labor Code § 1700.37.
[8] INDUSTRIAL WELFARE COMMISSION, ORDER NO. 12-2001 (Jan., 2002), pp. 3-4.
[9] Quintus Ennius.
[10] Harold L. Vogel, *Entertainment Industry Economics: A Guide for Financial Analysis,* p. 99 (2001).
[11] DGA, Basic Agreement of 2017, Art.2, § 2-101, p. 26.
[12] DGA, Basic Agreement of 2017, Art.2, § 2-601, p. 36.
[13] https://www.csatf.org/training/upgrade/800-training-series/.
[14] https://www.dga.org//-/media/Files/Contracts/Rate-Cards-2022-thru-2023/DGA220713Rates2022thru2023.pdf.
[15] https://www.wga.org/members/finances/residuals/hbsvod-programs.
[16] DGA, Basic Agreement of 2017, Sideletter No. 35, p. 559.

Entertainment Guild & Union Agreements

Test No. 167

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. Entertainment industry collective bargaining agreements tend to efficiently harmonize labor-management relationships.
   ❑ True ❑ False
2. The entertainment industry is a major U.S. industry, accounting for close to $20 billion in exports.
   ❑ True ❑ False
3. California's *Talent Agency Act* requires talent agents to be licensed.
   ❑ True ❑ False
4. A manager can also procure work for their clients and take a percentage for doing so, provided that the manager actually procured the work for their client.
   ❑ True ❑ False
5. Coogan's law was named after famous child actor Jackie Coogan.
   ❑ True ❑ False
6. The basic Coogan's Law requirements can be found in *Fam. Code* §§ 6750-6753 and also in *Lab. Code* § 1700.37.
   ❑ True ❑ False
7. California's *Wage Order 12* contains overtime carve-outs for work in the motion picture industry, including alternate workweek schedules.
   ❑ True ❑ False
8. Many of the collective bargaining agreements recognize emerging new media working requirements through Sideletters or other such similar amendments.
   ❑ True ❑ False
9. "*Five Easy Pieces*" refers to: wages (also, where applicable, royalties) and working hours (including meal periods); health and welfare; pensions; training and apprenticeships; and, arbitration.
   ❑ True ❑ False
10. Collective bargaining agreements are guild and/or union specific?
    ❑ True ❑ False
11. Collective bargaining agreements typically contain binding ADR provisions?
    ❑ True ❑ False
12. The DGA's BA contains an arbitration provision that addresses disputes over credit provisions.
    ❑ True ❑ False
13. Collective bargaining agreement ADR provisions tend to offer timely resolution?
    ❑ True ❑ False
14. Collective bargaining agreements may contain carve-outs in connection with claims for unpaid compensation.
    ❑ True ❑ False
15. Training and apprenticeships are part of many guild and union collective bargaining agreements.
    ❑ True ❑ False
16. Rate Cards contain provisions for compensation, how many days are anticipated to be worked by the union or guild member, and may also provide for a royalty payment schedule.
    ❑ True ❑ False
17. VOD stand for Video On Demand.
    ❑ True ❑ False
18. For non-union projects, Agreements reflect generally accepted custom-and-practice in the particular industry segment?
    ❑ True ❑ False
19. Collective bargaining agreements may not derogate from standard California labor law?
    ❑ True ❑ False
20. When representing clients seeking work in the entertainment industry, counsel must familiarize themselves with the applicable collective bargaining agreement.
    ❑ True ❑ False

Entertainment Guild & Union Agreements

MCLE Answer Sheet No. 167

INSTRUCTIONS:

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

   San Fernando Valley Bar Association
   20750 Ventura Blvd., Suite 104
   Woodland Hills, CA 91364

METHOD OF PAYMENT:

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

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Credit Card Number

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CVV code Exp. Date

_____
Authorized Signature

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

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

ANSWERS:

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

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

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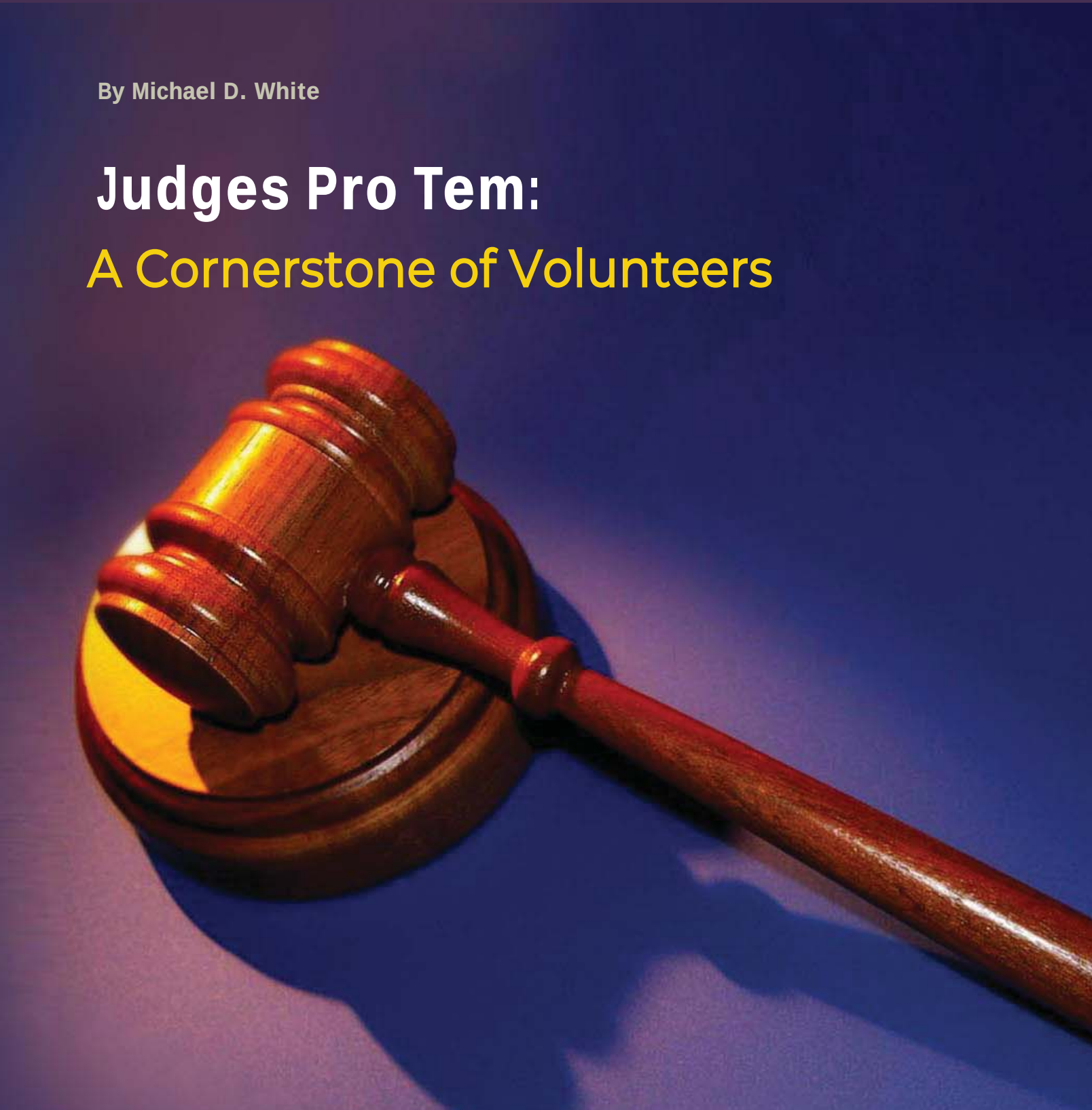
By Michael D. White

Judges Pro Tem:

A Cornerstone of Volunteers



Over the past two centuries, the position of Judge Pro Tem had evolved from California's pre-statehood *alcaldes* to today's highly motivated and experienced volunteer attorneys who give up their time to help provide access to justice for Los Angeles County's 10 million residents.

JUDGE'S PRO TEMPORE PLAYED a major role in the administration of justice in the earliest days of California. Before California was admitted to the Union in September 1850, Spanish alcaldes would serve, not only as municipal administrators, but also as judges, presiding "*for the time being*" over cases regarding such issues as land disputes, the ownership of livestock, and water rights.

As the years passed, the position of judge pro tempore expanded in scope as California saw its population explode, though no standardized state-wide criteria existed that defined the requirements or qualifications for those already serving—or those wishing to serve—in that capacity.

It wasn't until 1922 when California voters overwhelmingly voted to approve Proposition 22 which amended Article VI of the state's Constitution to require that "*though the parties to any cause in the Superior Court, or their attorneys of record, may agree upon any member of the bar to try their cause as judge pro tempore, such judge must be first approved by the Superior Court in which he acts*."

According to a proponent of the Proposition in the state Senate, "*The necessity of this amendment was strongly shown some time since when in two or more counties of the state a number of divorce cases were tried, adjudicated and decrees granted by judges pro tempore without the knowledge of the regular judge by whom such cases are regularly determined and without said judge being advised of what was transpiring.*"

Much discussion and indignation, he said, "*was aroused throughout the state and it was the general feeling that the amendment now proposed was absolutely imperative. The present amendment does not seek to abolish judges pro tempore but is merely regulatory of their appointment. In short, it gives to the judges, whom the people have elected and whom the laws have charged with judicial duties reasonable supervision over grave judicial decisions*."

Proposition 22 became, then, the catalyst mandating that pro tem judges be uniformly qualified, adhere to certain standards, and serve at the discretion of the Presiding Judge of the County in which they serve.

What They Are

In California, the Rules of Court mandate that "*court-appointed temporary judge means an attorney who has satisfied the requirements for appointment under Rule 2.812 and has been appointed by the court to serve as a temporary judge in that court*."

The purpose of court appointment of attorneys as temporary judges, the Rules state, "*is to assist the public by providing the court with a panel of trained, qualified, and experienced attorneys who may serve as temporary judges at the discretion of the court if the court needs judicial assistance that it cannot provide using its full-time judicial officers*."

Being the largest trial court in the entire nation the Los Angeles Superior Court currently has 550 judicial officers serving in 37 courthouses who, in fiscal year 2020-21, handled more than 1.1 million filings—a massive task that makes the Pro Tem program an absolute imperative.

The County's Pro tem program "*is a cornerstone of our court*," says Los Angeles Superior Court Presiding Judge, Eric F. Taylor.

The Program, he says, "*as an integral part of the Court's framework for delivering on our mission to provide equal access to justice through the fair, timely and efficient resolution of all cases.*"

Approximately 510 temporary judges currently serve in Los Angeles County.

Prior to the year 2000, both the Superior Court and the Municipal Courts used temporary judges.

In September of that year, Presiding Judge Victor E. Chavez officially formed the Temporary Judge Committee to determine the usage of temporary judges after unification of the trial courts in Los Angeles County.

The role of the Committee is to examine whether or not such usage is necessary, and to make recommendations as to how the Court might improve our service to the community in this regard. The Temporary Judge Committee was responsible for recruiting, selecting, training, evaluating, and monitoring temporary judges.

In October 2000, temporary judges were required to apply for re-certification and attend training every three years to continue to serve. Recruitment for temporary judges occurs 1-2 times each year.

Requirements for Appointment

The Court can appoint an attorney as a temporary judge only if the attorney has satisfied the requirements of the Rules of Court.

The presiding judge, the Rules state, "*may not appoint an attorney to serve as a temporary judge unless the attorney has been admitted to practice as a member of the State Bar*

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of California for at least 10 years before the appointment. However, for good cause, the presiding judge may permit an attorney who has been admitted to practice for at least 5 years to serve as a temporary judge."

The presiding judge may appoint an attorney to serve as a temporary judge only if the attorney…

- Is a member in good standing of the State Bar and has no disciplinary action pending;

- Has not pled guilty or no contest to a felony, or has not been convicted of a felony that has not been reversed;

- Has satisfied the education and training requirements;

- Has satisfied all other general conditions that the court may establish for appointment of an attorney as a temporary judge in that court; and,

- Has satisfied any additional conditions that the court may require for an attorney to be appointed as a temporary judge for a particular assignment or type of case in that court.

Before the Court can appoint an attorney to serve as a temporary judge in any type of case, they must have received training under the Rules of Court in the following subjects: bench conduct, demeanor, and decorum; access, fairness, and elimination of bias; and, adjudicating cases involving self-represented parties.[1] [2]

A candidate attorney must also have received ethics training under the Rules in the following subjects: judicial ethics, generally; conflicts; disclosures, disqualifications, and limitations on appearances; and ex parte communications.[3] [4]

The presiding judge can, according to the Rules of Court, appoint an attorney to serve as a temporary judge only if the following minimum education and training requirements are satisfied:

- The candidate attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours duration on the subjects identified in the Rules approved by the court in which the attorney will serve.

- Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course of at least 3 hours in duration on the subjects identified in the Rules approved by the court in which the attorney will serve. "*This course may be taken by any means approved by the court, including in-person, by broadcast with participation, or online*."

- Before appointment, the attorney must have attended and successfully completed, within the previous three years, a course on the substantive law in each subject area in which the *attorney will serve as a temporary judge. The courses may be taken "by any means approved by the court, including in-person, by broadcast with participation, or online*."

The substantive courses have the following minimum requirements:

- Small Claims—An attorney serving as a temporary judge in small claims cases must have attended and successfully completed, within the previous three years, a course of at least 3 hours in duration on the subjects identified in the Rules approved by the court in which the attorney will serve.[5]

Before the court may appoint an attorney to serve as a temporary judge in small claims cases, the attorney must have received training under the Rules in the following subjects: small claims procedures and practices; consumer sales; vehicular sales, leasing, and repairs; credit and financing transactions; professional and occupational licensing; tenant rent deposit law; contract, warranty, tort, and negotiable instruments law; and "*other subjects deemed appropriate by the presiding judge based on local needs and conditions*."[6]

In addition, an attorney serving as a temporary judge in small claims cases must be familiar with the publications identified in the Code of Civil Procedure.[7]

- Traffic—Traffic is, by far, the Los Angeles Superior Court's most requested area of law. An attorney serving as a temporary judge in traffic cases must have attended and completed, within the previous three years, a course of at least 3 hours duration on the subjects identified in the Rules approved by the court in which the attorney will serve.[8]

Before the Court may appoint an attorney to serve as a judge pro tem in traffic cases, the attorney must have received training under the terms of the Rules of Court in the following subjects traffic court procedures and practices; correctable violations; discovery; driver licensing; failure to appear; mandatory insurance; notice to appear citation forms; red-light enforcement; sentencing and court-ordered traffic school; speed enforcement; and settlement of the record.

Training is also mandated in uniform bail and penalty schedules; vehicle registration and licensing; and "*other subjects deemed appropriate by the presiding judge based on local needs and conditions.*"[9]

- Other Subject Areas—If the court assigns attorneys to serve

as temporary judges in other substantive areas such as civil law, family law, juvenile law, unlawful detainers, or case management, the court "*must determine what additional training is required and what additional courses are required before an attorney may serve as a temporary judge in each of those subject areas.*"

The training required in each area must be of at least 3 hours duration. The court may also require that an attorney "*possess additional years of practical experience in each substantive area before being assigned to serve as a temporary judge in that subject area*."

L.A. Superior Court Specific

While adhering to the California State Rules of Court, the Los Angeles County Superior Court also requires that its Pro Tem Judges follow certain, specific guidelines.

Bench Time: For example, pro tem judges are not permitted to sit on the bench as often as they would like for several reasons—the court locations that have been specified as preferences does not require the services of Temporary Judges as often as other locations, or the areas of substantive law in which the attorney are certified do not require the services of a Temporary Judge as often as others.

Restricted Duty: If an attorney is a criminal prosecutor or criminal defense attorney, according to the Superior Court's Pro Tem Program Office, they will not be assigned to a traffic courtroom. If their practice is unlawful detainers and 90 percent of it is representing landlords or tenants exclusively, the attorney will not be assigned to an unlawful detainer courtroom. Eligibility to serve in other subject matter areas may be granted after the required training is completed.

Self-Promotion: The Superior Court takes the use of the titles Judge, Judge Pro Tem, and Temporary Judge very seriously.

Bolstered by the California Code of Judicial Ethics, the Superior Court's Pro Tem Program Office is emphatic that attorneys participating in the Temporary Judge Program may never use those titles "*in any advertising, nor on a business card, stationery or ballot designation. In addition, attorneys participating in the program may neither take nor disseminate for any reason photographs of themselves in judicial robes.*"

This policy, says the Office, "*is not intended to preclude attorneys serving as Temporary Judges from describing their service to the court in resumes, applications or other similar documents.*

"*Nevertheless, it is intended to protect the public from believing that you are a judicial officer of the Los Angeles Superior Court.*"[10]

Temporary Judges serve for three years at the conclusion of which a renewal application must be submitted in order to continue serving as a Pro Tem.

Attorneys renewing their status as a Temporary Judge are also required to provide verification of the mandatory Bench Conduct and Demeanor and Ethics training and one substantive matter.[11]

"*The attorneys from our Los Angeles legal community that volunteer their time to serve are the best of us*," says LASC Presiding Judge Taylor.

The volunteers, he adds, "*believe in justice, which is why many of them ultimately become full time judges and commissioners.*"

[1] California Rules of Court, Rule 2.812
[2] *Id.* Subd (a) amended effective January 1, 2007.
[3] *Id.* 2.812(c)(2).
[4] *Id.* Subd (b) amended effective January 1, 2007 (c).
[5] *Id.* 2.813(c).
[6] *Id.* 2.812(c)(3)(A).
[7] Code of Civil Procedure section 116.930. (Subd (c) amended effective January 1, 2007.
[8] California Rules of Court 2.813(d).
[9] *Id.* 2.812(c)(3)(B).
[10] California Code of Judicial Ethics, Canon 6D.(9)(a) and (b).
[11] California Rules of Court, Rule 2.812.

ANNUAL JUDGES' NIGHT

WEDNESDAY, AUGUST 17, 2022 • MOUNTAINGATE COUNTRY CLUB

On August 17, 2022, the San Fernando Valley Bar Association held its Annual Judges' Night at the Mountaingate Country Club in Los Angeles.

More than 240 attendees, including 65 bench officers, were on hand to celebrate the presentation of the Association's Judge of the Year Award to Los Angeles Superior Court Judge, Hon. Firdaus F. Dordi.

Also honored at the gala event were recipient of the Bar's Stanley Mosk Legacy of Justice Award, Hon. Maureen A. Tighe, Immediate Past Chief Bankruptcy Judge of the Central District of California; and retired Los Angeles Superior Court Judge, Hon. Clifford L. Klein, who was presented with the Association's Administration of Justice Award.


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Photos by Ron Murray **1.** Our Distinguished Judicial Officers **2.** SFVBA Bankruptcy Law Section Chair Steve Fox and Legacy of Justice Honoree Judge Maureen Tighe **3.** SFVBA Board Members Alex Hemmelgarn, Steve Sepassi, Alan Eisner and Immediate Past President David Jones **4.** VCLF Members Joy Kraft Miles (VCLF President), Minyong Lee, Sarah Reback **5.** Past SFVBA Judge of the Year Hon. Huey Cotton and 2022 Judge of the Year Hon. Firdaus Dordi **6.**Treasurer Amanda Moghaddam and Events Committee member Sarah Navarro **7.** Past President Kira Masteller and Administration of Justice Honoree Judge Clifford Klein, Ret. **8.** VCLF Officers and Directors **9.** SFVBA Board Members in attendance and Executive Director Rosie Soto Cohen **10.** The Dordi Family and Friends **11.** Past Presidents Tamila Jensen and Patricia McCabe **12.** Dave Bobrosky and SFVBA Past President Steve Holzer (Lewitt Hackman, Emerald Sponsor) **13.** Poster of our Diamond Sponsor **14.** NLSLA Executive Director Yvonne Mariajimenez and the NLSLA Table **15.** Immediate Past President David Jones and Hon. Clifford Klein, Ret. **16.** President Elect Matthew Breddan and Valarie Dean **17.** Poster of our Emerald Sponsor **18.** Judges Cotton, Dordi and SFVBA President Chris Warne **19.** Judge Tighe addresses the gathering **20.** NLSLA Executive Director Yvonne Mariajimenez with NLSLA Attendees **21.** SFVBA Board Member and VCLF President Joy Kraft Miles and SFVBA Public Service Associate Dir Miguel Villatoro and associates **22.** Executive Director Rosie Soto Cohen and Associate ARS Director Miguel Villatoro **23.** SFVBA Members Lauri Shahar, David Kestenbaum, Sara Weinstein and Robert Weinstein **24.** Past Presidents Steve Holzer and Patricia McCabe **25.** Judge Paul Bacigalupo and Valarie Dean **26.** Past President Kira Masteller and Hon. David Cowan, Supervising Judge of the Civil Division of LASC **27-29.** Posters of our sponsors

By Cate Giordano

Estate Planning Marketing: Growing Your Practice

TO BE SUCCESSFUL, ESTATE PLANNING LAW firms must have a comprehensive marketing strategy. We'll dive into marketing tips that will help you attract new clients and grow your estate planning business.

We will begin by addressing estate planning and then discuss the skills required to work in this area. After that, we will dive into a variety of digital marketing tips that you can use to attract more clients. These tips include social media, SEO, email chains, and many others.

As an estate planner, getting in front of as many potential clients as possible is key to a successful practice.

But how do you do that? Here we will discuss tips and tricks for marketing your estate planning law firm. We will begin by addressing estate planning and then discuss how to market your firm using social media, SEO, and email chains.

The rising number of individuals aged has contributed to the increasing demand for estate plan services. Is your estate planning practice effective at attracting more clients?

A successful estate planning campaign should incorporate all relevant marketing methods. The best plan for lawyers beginning their clients' development should be based on a clear plan to leverage their knowledge to gain clients.

Overview of Estate Planning Law

Estate planning is a process that helps individuals and families protect their assets while also ensuring that their wishes are carried out after death.

It can encompass various activities, including estate tax planning, drafting wills and trusts, and creating estate administration plans.

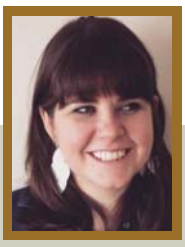
A solid estate plan should take into account everything you own. To get you in the proper frame of mind, consider the many forms of property that make up your estate: real estate and property such as houses, land; personal property—cars, artwork, jewelry, for example; bank accounts; retirement assets, stocks, and securities; and, life insurance policies

Many individuals overlook all of the aspects that go into a finished estate plan. Estate planning entails more than simply putting your last will and testament in motion. You'll help families anticipate as many circumstances as possible.

Skills Required

Estate planning law is a specialization within the legal field that deals with estate-related tasks such as estate tax planning, drafting wills and trusts, and creating estate administration plans.

As an estate planning lawyer, you must comprehensively understand these areas to provide sound advice to your clients.



Cate Giordano works with legal software developer Lawmatics. Founder of CML Digital Marketing, she has over 15 years of experience working in the legal field as a marketer and writer. More information is available at https://www.lawmatics.com/.

In addition, you must also be able to communicate with your clients and understand their needs effectively.

• *You Think Ahead:* Estate planning lawyers must think long-term because they often work with clients for many years.

During this time, estate planners are responsible for helping their clients safeguard their assets and ensure their wishes are fulfilled after they die.

• *You Like to Help People:* Some estate planning lawyers work with families through generations.

When one client passes away, estate planners may be enlisted by any surviving family members, which means decades of service.

Your client relies on you to safeguard their family assets.

They entrust you to craft the plan that aligns with local and federal laws, manages taxes, and passes most of the wealth to the beneficiaries upon death.

• *You Like Dealing with Financial, Trust, and Taxation Issues:* You must also communicate with your clients about their financial situation and estate planning goals.

Many estate planners need to track a client's assets, liabilities, and estate taxes.

Why Implement a Marketing Strategy For Estate Planning Attorneys?

Estate planning attorneys face a competitive marketplace that makes attracting clients difficult.

An effective marketing program that attracts new business clients will be essential for achieving the company's objectives and growth.

• *Beating Out the Old Guard:* It can be challenging to break into markets with an "old guard."

Established players in a market often have a decisive advantage, and it can be hard to dislodge them. This is especially true in estate planning, where many attorneys have been practicing for years.

Young attorneys must be prepared to work hard and develop creative marketing strategies to attract new business.

• *Competing Against Do-It-Yourself (DIY) Options:* Many individuals may be tempted to take on writing their will themselves to avoid paying for a lawyer's services.

After all, many online resources, like *LegalZoom*, *RocketLawyer*, and other DIY kits, are available to help people create a comprehensive estate plan without legal assistance.

• *Competing with Financial Industry:* The financial industry has been increasingly targeting estate planning to expand services.

As a result, estate planners must continuously adapt their marketing strategies to stay ahead of the competition.

There are many estate planning law firms, but how do you make yours stand out from the rest?

However, we know that estate planning is a complex process that requires the expertise of a qualified lawyer.

Foundations of Marketing Best Practices

A well-crafted marketing strategy can help you attract new clients, expand your client base, and grow your estate planning law firm.

• *Track Your Leads with Call Tracking:* Call tracking is a valuable tool that estate planning law firms can use to track the success of their marketing campaigns.

By monitoring the number of calls generated by a campaign, your estate planning law firm can measure the effectiveness of your marketing efforts.

Use a call-tracking service that offers local or toll-free number options, call recording, and detailed reporting.

• *Use a CRM to Manage Relationships:* A CRM, or customer relationship management system, is a valuable tool that estate planning law firms can use to manage their qualified leads and clients.

A CRM can support your estate planning law firm's marketing efforts by helping you keep track of all the essential details about your clients. With detailed information about each client's assets, liabilities, and estate, your estate planning law firm can more effectively market to them.

Additionally, a CRM can help you track the progress of your estate planning services, so you can more effectively measure the success of your marketing campaigns.

You can attract and retain clients more effectively by using a CRM to support your estate planning law firm's marketing efforts.

• *Nurture Leads with Email Campaigns:* One of the most effective ways to keep potential estate planning clients in mind is through email nurture campaigns.

An email nurture campaign involves sending targeted emails to potential clients to persuade them to become clients. Creating a simple birthday email campaign can delight and remind your potential clients.

Each of the three foundations of marketing efforts—call-tracking, CRM, and email nurture—is necessary for estate planning law firms to succeed in attracting new clients.

Channels to Market Your Estate Planning Firm

Estate planning law firms have a unique opportunity to market their services in various ways.

Networking, *Google My Business*, content marketing, social media, and paid advertising are five effective methods that estate planning law firms can use to reach more clients and grow their business.

Estate planning law firms should create a marketing plan that encompasses all of these strategies based on your goals, budget, and target audience.

• *Referrals, Online Directories & Local Involvement:* Start your marketing strategy by leaning on and growing your network.

You can't just sit and wait for clients to come to you. You need to be proactive and generate leads by getting the word out about your law firm.

• *Referrals and Networking:* Start your marketing efforts by tapping into your network and community.

One of the best ways to market your estate planning firm is to receive referrals from other professionals.

Financial advisers, accountants, insurance agents, and other attorneys are all potential sources of referrals for estate planning law firms.

• *Get Involved in Local Events:* Attending and sponsoring local events allows estate planning law firms to gain exposure and build relationships with the community.

Consider sponsoring a Fun Run or 5K that donates to cancer research, a local choir, theater, or museum, or buy a little league's baseball shirts.

You show that you care and are committed to the community. Sponsoring local events is also a great way to get links to your law firm website.

• *Backlinks:* When another website links to your estate planning law firm's website, it is called a backlink. This strongly indicates to *Google* that your website is an authority on the topic and should be ranked.

Backlinks are essential to SEO, and estate planning law firms should take advantage of them to improve their website's ranking.

• *Online Directories:* One of the most effective ways to market your estate planning firm is by listing your firm in online directories.

Online directories are websites that allow businesses to list their contact information, products, and services. Listing your estate planning firm's online directories can help you reach more clients and grow your business.

Some standard legal online directories you should consider are: *Avvo*; *Nolo*; *Justia*; *Lawyers.com*; *Lawyer.com*; *HG.org*; and, *Martindale-Hubbell*.

While, in a sense, *Google My Business* (GMB) is an online directory, it is also the best way to get in front of your community. It allows you to control your estate planning law firm's appearance in search results and Google Maps.

The best part about using *Google My Business* is that it is a free business listing.

• *Claim & Fill Out Your GMB Profile:* Claiming your GMB profile is the first step in taking control of your estate planning law firm's online presence.

To claim your business, you must log in to *Google* and either claim an existing profile or create a new one. You will need to coordinate with *Google* to receive a verification code to verify your profile.

The default method for obtaining the code is by postcard to the address.

After you have claimed your listing, it is time to fill out your GMB profile.

Your GMB profile should include your business name; your contact information—address, phone, website; a description of your estate planning services; your hours of operation; and answers to questions.

When filling out your *Google My Business* profile, include keywords that people may use to search for your services in the description.

• *Use GMB Like It's Social Media:* Did you know that you can post on GMB? When you post new content on your GMB profile listing, you provide local customers with helpful information about your company.

This contributes to increasing your local authority. Treat posts as additional ways to answer FAQs, promote your website, and add additional keywords.

• *Add Photos and Videos to Your GMB Listing:* Showcase your firm's office, team, and services by adding pictures to your profile. Adding photos allows potential clients to understand you and your firm better.

Take it one step further and get 360 photography of your law office- think Street View, but indoors. To get 360 photos on your *Google My Business*, you must work with a *Google* trusted photographer.

Optimize Your Website

Create and update content on your website will increase your authority on Estate Planning in the search results.

The more information you provide on your website will help your site appear prominently online.

• *Practice Area Pages:* When we talk about web content, we don't only mean blogging. Make sure your website details all of your practice areas.

Explain your topic and how you would handle that issue, and end with a call-to-action—"*call today for a consultation*," for example.

• *Blogging for Busy Lawyers:* An estate planning firm should consider blogging to keep its website up to date with relevant content.

Use your blog to answer questions that your clients ask you over and over again. A blog is a great way to show your expertise on the topic and can also act as a resource for potential clients.

• *Experiment with Other Forms of Content:* Once you've built your website and started blogging as part of your estate planning marketing strategy, you can experiment with different media.

Estate planning can be a complex process, and many people have questions about it. Try filming a video to answer some of the most common questions. This is a great way to show your expertise and help potential clients understand estate planning better.

You can also create long-form, helpful content like an eBook that people can download. This is a great way to show your expertise and provide potential clients with additional information about estate planning.

Social Media

Estate planning lawyers can use social media to connect with potential clients and build their businesses.

Estate planning lawyers can attract new clients and grow their practices by creating interesting, engaging content.

• *Go Where Your Clients Already Are:* Your prospective clients are online. They are watching videos, reading articles, and checking social media.

Social media can be highly effective for keeping in touch with existing clients, reaching new ones, and expanding your referral network.

That said, choosing the proper social media channels is important. It makes sense for estate planning lawyers to be visible on social media platforms like *Facebook, Twitter*, and *LinkedIn*. Lawyers can use these platforms to share blog posts, answer client questions, and connect with potential clients.

• *Linkedin, Where Everybody Knows Your Game:* *LinkedIn* is the most useful channel for estate planners with users who are usually more professional, more established, and better educated, so it's only natural to have a presence on this platform.

Like most social platforms, you can use it to share analyses or insights about changes in legislation or other timely news. You can promote your new blog articles, share information about your business, and add videos or images to enhance your posts.

Regular posts will help you establish yourself as an estate-planning expert and help you reach more potential clients.

• *Ask Your Clients for Reviews*

Online reviews are incredibly important and give social proof to prospective clients. Make it easy for your clients to leave a review by providing them with a link to your online profiles to leave a review.

In an ideal world, every happy client would leave a 5-star review on *Google*, but sometimes clients are shy about leaving reviews on *Google* because it will list their name publicly.

If your client feels more comfortable leaving a review on *LinkedIn, Facebook*, or even an online directory like *Avvo*—encourage them to do so.

• *Social Media and Reviews:* As with all marketing strategies, you want to strike a balance in your approach. SEO and social strategy require consistency over time. Building strong relationships through networking and community involvement also take time.

• Paid Advertising Campaigns: Paying for advertising is a great way to ensure that your company is always at the top of the search results, and it can keep the phones ringing when your firm is in a slump.

Law firms can also consider using paid marketing strategies to reach potential estate planning clients. Placing ads in relevant online and offline publications or websites targeting your desired audience can be extremely effective.

Additionally, law firms can use targeted online advertising, such as pay-per-click advertising or display advertising, to reach individuals interested in your services.

Use a Dedicated Landing Page to Track and Convert Leads

If you are investing in paid advertising, you need to take the extra step to include a dedicated landing page for each of your paid campaigns.

If you choose to have your landing page on your website, remove all site navigation so the lead will stay on that page and convert. You can also build out landing pages on platforms that specialize in converting PPC leads.

Your PPC landing page will be specifically designed to capture the contact information of individuals interested in learning more about estate planning services.

The advantage of using a landing page is that you can track how many people are visiting the page and how many are filling out the contact form. This data will be extremely valuable as you assess your ROI for your paid campaigns.

Test Google Local Service Ads

Google Local Service Ads is a relatively new advertising platform that allows you to place ads for their services in the local search results.

These ads appear as a sponsored listing at the top of the search results and include a call-to-action button that allows potential clients to contact the law firm quickly.

To be eligible to participate in *Google Local Service Ads*, all of the attorneys at your firm must meet specific requirements, such as being licensed and insured. Additionally, your firm's attorneys must undergo a background check conducted by *Google*.

Despite the effort, *Google Local Service Ads* can be an extremely effective way to reach potential estate planning clients who are searching for estate planning services in your area because you will appear at the top of search results—even above other PPC ads—and *Google* will have verified you.

Some of the most effective marketing strategies for an estate planning practice include creating helpful, optimized website content to address FAQs, sponsoring local teams or charities, and filling out your *Google My Business*.

These strategies will help you reach prospective clients and connect you to the community.

FAQs

What are the best places for estate lawyers to have an online presence?

There are several great places estate planning lawyers can have an online presence.

A website is a must-have. Your website should accurately represent your practice and what you provide. Consider an search engine optimization (SEO) strategy to optimize your website so that potential consumers may locate you online with ease.

You should also consider social media sites, as they are ideal for establishing connections with potential clients. *LinkedIn* is a fantastic platform for estate planning professionals to network and develop relationships with new clients.

How can Google attract clients who need help with wills & estate planning?

You can use *Google* products like *Google My Business* and *Google Local Service Ads* to get in front of prospective clients.

To start, you need to claim and verify a *Google My Business* listing and optimize it for search engines, making it easier for prospective clients to find you. Once you have your GMB listing, you can write posts related to estate planning.

Google Local Service Ads will display your law firm information at the top of the search results page and push people to call you.

ALTERNATIVES: Courts must consider alternatives to incarceration under legislation recently approved by the California legislature.

But, "*Judges will retain full judicial discretion as to the final sentence and have the option to incarcerate when necessary to protect public safety,*" according to a statement by AB 21677 author Assemblymember Ash Kalra (D-San Jose).

The measure, said Kalra, will, if signed into law, "*require courts presiding over a criminal matter to consider alternatives to incarceration which includes, but is not limited to, diversion programs, restorative justice, and probation.*"

JURY SELECTION REPORT: The Jury Selection Work Group, appointed by the California Supreme Court in 2020 to study issues related to discrimination in jury selection, has issued its final report.

The work group, chaired by Justice Kathleen O'Leary of the Fourth District Court of Appeal, was comprised of a retired member of the California Supreme Court and current and retired justices and judges from the Courts of Appeal and trial courts.

Five attorneys served as advisory members of the work group, which was supported by Judicial Council staff. The work group's deliberations included a public comment process in which an array of stakeholders provided input regarding the issues before the group.

MINIMUM WAGE: The Los Angeles City Council has approved a new healthcare worker minimum wage ordinance, increasing the minimum wage for healthcare workers at private healthcare facilities in Los Angeles to $25.00 per hour.

Similarly, the Downey City Council approved its own citywide healthcare worker minimum wage ordinance. For the moment, however, both ordinances are on pause. The Los Angeles ordinance would have gone into effect on August 13, 2022, and the Downey ordinance would have become effective on August 11, 2022.

On August 10, 2022, two separate referendum petitions were filed with the City of Los Angeles and the City of Downey, respectively. Supported by the "*No on the Unequal Pay Measures*" group, the petitions seek to stay the ordinances and have the issue decided by voters in their respective cities.

Proponents of the petitions stated that they gathered twice as many signatures required to suspend the minimum wage ordinances to hold a public vote on the new minimum wage hikes.

MASS FIRING: In what some say is an "*unprecedented*" move, last week, Oregon Supreme Court Chief Justice Martha Walters has fired all nine members of the state's Public Defense Commission after urging them to fire the Executive Director of Public Defense Office.

The firings occurred one day after she announced that she was appointing four new commissioners and reappointing five from the previous group, and one week after a public hearing in which she urged the Commission to fire the recently appointed executive director of the Office of Public Defense Services, on the grounds that he was "*untrustworthy, combative, and slow to address the state's public defense crisis.*"

The commission deadlocked on that decision, with a 4-4 vote and one member absent, and planned to meet in executive session to further discuss the Executive Director's job performance. Others in the public defense community have defended his work to, they say, "*reform a system that has been broken for years.*"

DID YOU KNOW...California requires loyalty from its public sector employees? The state's Government Code Chapter 3 of Part 1 of Division 5 of Title 2 is titled "*Loyalty.*"

It has a single code section, Section 18200 which prohibits a person from being "*knowingly employed by any state agency or court who either directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the Government of the United States or of this state.*"

FREE BILLING GUIDE: *Attorney at Law* magazine is offering download access to a new guide aimed at helping attorney's craft a frictionless billing strategy designed to eliminate the most common barriers to client payment.

The guide, available at no cost, provides a comprehensive checklist of everything needed to handle legal billing, from setting rates to submitting invoices.

Access the Guide at:
https://store.lmknowledgehub.com/storage/lawm/7Z6TUw0RAfvPxr7Se6gpPVb2duqZ01rD5IUTXOYC.pdf

TIMELESS WISDOM: "*Character may almost be called the most effective means of persuasion*"— Aristotle

By Richard F. Sperling

Premarital Agreements: Perils and Pitfalls

"…some factual circumstances that would not necessarily support the rescission of a commercial contract may suffice to render a premarital agreement unenforceable."

—*In re Marriage of Bonds* (2000) 24 Cal.4th 1, 26, 29.

SHOULD A SPOUSE BE BOUND BY THE TERMS OF a premarital agreement she signed, even though the parties signed the wrong draft?

In a recent controversial Court of Appeal decision, *Estate of Eskra*, the court grappled with the law of extrinsic evidence, mutual and unilateral mistake, and the requirements of the premarital agreement statute, Family Code 1615, in resolving this question.[1] [2]

This article addresses that struggle and suggests the court may have missed the mark in its decision.

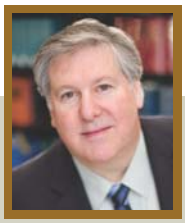
Facts of the Case

Brandy married Scott Eskra in 2015. Scott, who had a daughter from a previous marriage, died intestate three years later in a freak work accident.[3]

Before they married, Brandy and Scott signed a Premarital Agreement. The Agreement they signed provided their separate property would remain separate, and that each party waived "*all right, claim or interest…*" in the other's estate, including all community property rights. Both parties were represented by counsel.

The Agreement contained a standard integration clause stating the Agreement contained "*…the entire understating and agreement of the parties*." The issues in this case concern not only whether the signed Agreement reflected the intent of the parties, but also the manner in which the Agreement was signed.

Brandy hired attorney Tracy Rain to represent her. When they met and read the initial draft on April 24, 2015, Brandy became very upset because it contained a broad waiver of all rights to Scott's property in the event of his death. The



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Agreement also contained specific waivers of rights, such as a family allowance, probate homestead, etc.

When Brandy told Rain the Agreement was supposed to address only divorce, Rain sent an email to Laurence Ross, Scott's counsel, explaining Brandy's objections to the draft. The email asked that the draft be amended, but inexplicably, the email asked Ross to redact only the specific waivers.

Brandy testified she went home and spoke with Scott, and then heard him instruct Ross by telephone to delete all terms relating to death. Ross sent a revised draft to Rain, but it only deleted the specific waivers. The broad clause waiving Brandy's rights in Scott's estate remained in the draft.

Brandy did not receive a copy of the revised Agreement before signing it.

Rain testified she expected to meet with Brandy to review the revised draft on May 1, and she told Brandy she was available all that day to meet. Brandy testified she did not understand she was to meet with Rain again.

On May 1, Brandy and Scott went to Ross's office and signed the revised draft without reading it. Brandy testified the signing lasted five minutes. Brandy and Scott were married the next day.

When Scott died unexpectedly three years later, Brandy petitioned to be appointed personal representative of his estate.

Scott's parents also filed a petition for appointment, and Scott's previous spouse filed a Petition on behalf of their daughter Stephanie, who per the terms of the Agreement as signed, stood to inherit Scott's estate by intestate succession.

Trials and Appeals

Two trials and two appeals followed. At the first trial, the trial court granted a motion *in limine* forbidding Brandy from introducing extrinsic evidence concerning the Agreement. The trial court also entered a summary finding that the Premarital Agreement was not unconscionable and that Brandy entered into the Agreement voluntarily.

In an unpublished opinion, the appellate court remanded, holding that even though the Agreement as signed was not ambiguous, Brandy should have been allowed to introduce extrinsic evidence of mistake, to prove that the draft did not reflect the intent of the parties.

At the second trial, Ross and Scott's family members testified Scott intended his daughter to inherit his estate, and that he intended the Premarital Agreement to address his death as well as divorce. Brandy and her family members testified Scott told them the Premarital Agreement was not to address his death.

Brandy's Mother testified Scott assured her that "*Brandy didn't have anything to worry about… because he had the death taken out of the Agreement*."

The trial court declined to revisit the Family Code and whether the Agreement was unconscionable or entered into involuntarily.[4]

Instead, it referenced its previous summary findings and found the scope of the trial was limited to finding whether there was mutual or unilateral mistake.

After a two-day trial, the trial court found there was no mutual mistake because Scott was not mistaken, that the Agreement reflected his intent. It entered a finding that Brandy did not want the Agreement to apply in the event of Scott's death, and that Brandy was unilaterally mistaken as to the terms of the Agreement she had signed.

However, the trial court then ruled that Brandy's unilateral mistake did not justify rescission because there was insufficient evidence Scott encouraged her mistake, and Brandy did not act with reasonable care in signing the Agreement because she did not meet with her attorney or read the draft before signing it.

Scott's former spouse was appointed personal representative of Scott's estate, and Brandy appealed.

Premarital agreements can be challenging to review, because their enforcement depends upon both traditional contract defenses and also upon the arduous terms of the Premarital Agreement statute found in the Family Law Code.[5]

Mistake and Rescission

On appeal the court relied on a 2001 commercial contract case, *Donovan v. RRL Corp*.[6]

In *Donovan*, an errata in a car dealer's ad offered to sell a car far below the intended sale price. A buyer offered to buy at the low price, and when the dealer refused, the buyer sued for breach of contract.

The *Donovan* court permitted rescission based upon unilateral mistake of fact. The *Donovan* court cited the rule in Section 153, subdivision (a) of the Restatement, stating that a defendant may rescind if the rescinding party does not "*bear the risk*" of the mistake and the effect of the mistake is such that enforcement would be unconscionable.[7]

The Donovan court explained the rule, stating that, if the mistake is due to simple negligence, the car dealer may rescind; if the car dealer's error was a neglect of a legal duty, a significant negligence or good faith, rescission is unavailable.[8]

In *Donovan*, the dealer's mistake was simple negligence, and not such a breach of his duty of good faith and fair dealing as to preclude rescission on the ground of unilateral mistake of fact.

In *Eskra*, the appellate court held that *Donovan* and its interpretation of the Civil Code applies to premarital agreement rescission claims based upon unilateral mistake.[9]

The court found the trial court made several errors. It found the trial court erred because it did not make a finding as to Scott's knowledge, and it erred in applying the law of mistake, because the trial court stated that for rescission,

Scott had to have encouraged or fostered Brandy's mistaken belief as to the content of the Agreement.

Nevertheless, the court overlooked these errors, and stated that the critical question was whether Brandy's failure to read the agreement and meet with her attorney before signing was such a serious neglect of a legal duty as to preclude rescission.

The appellate court cited a line of a cases not discussed in *Donovan*, including a 1963 case, *Casey v. Proctor*, which held that failure to read a contract before signing it precluded rescission.

In *Casey*, a plaintiff in a personal injury suit signed a Release Agreement without reading it, believing the release settled only property damage claims.[10]

The release, which was negotiated and prepared by his insurer, actually released all claims. The court concluded the plaintiff's mistake was not grounds for rescission because he failed to read the release before signing it.

In our case, the appellate court affirmed the trial court's denial of rescission. Consistent with *Donovan* and *Casey*, Brandy's failure to read the Agreement or confer with her attorney before signing it was held to be so egregious as to defeat her rescission claim.

Was Justice Done?

Should our inquiry stop here? Did the Court of Appeals get it right?

In discussing the Restatement, the *Donovan* decision arguably had some sympathy for rescission claimants, in that it pointed out that the essential issue in such cases is whether "*the effect of the mistake is such that enforcement… would be unconscionable*."[11]

In addition, more recent cases hold that while a party who does not read a contract ordinarily cannot rescind it based upon mistake, rescission based upon mistake may be available where there is proof of fraud, overreaching, or excusable neglect.[12]

It seems the inquiry on appeal should have included a careful review of whether enforcing the Agreement against Brandy's claims was unconscionable, and whether there was overreaching at the signing conference.

The appellate court notes that the trial court observed that Brandy had access to and was advised by independent counsel, and that she had received the initial draft Agreement a week before signing it.

However, she did not see the revised Agreement before the signing conference, and she did not have counsel at the signing conference. What about Scott and his counsel's duty of good faith?

Scott and Ross could have postponed the signing, they could have attempted to contact Rain, and they could have disclosed whether the Agreement had been revised to address Brandy's objections. Instead, in a five-minute signing

at the office of Scott's attorney, Scott and Ross remained silent.

Each knew Brandy's objections to the Agreement, and each allowed Brandy to sign without the involvement of her counsel. In the turmoil and duress that accompanies a bride 24 hours before the day of her wedding, Brandy signed, trusting that the Agreement was revised and that she would be treated fairly.

On appeal, Brandy argued Scott had a duty of disclosure due to their intimate relationship. The appellate court rejected this offhand, even though the case of *In re Marriage of Bonds*, almost anticipating Brandy's plight, holds that while traditional contract defenses are applicable to premarital agreements, "*factual circumstances relating to such defenses that would not necessarily support the rescission of a commercial contract may suffice to render a premarital agreement unenforceable*."[13]

The appellate court also overlooked the trial court's failure to make the findings required by the Family Code, holding this was harmless error. This code section states a premarital agreement is not executed voluntarily unless the court enters five findings on the record or in writing.[14]

These findings would have included whether Brandy was represented by counsel, whether she had less than seven calendar days between the time she was presented with the agreement and the time it was signed, whether the agreement was executed under duress, fraud or undue influence, and "*any other factors the court deems relevant*."

On appeal, the court held that despite Brandy's objection at trial, the trial court's failure to make these five findings was harmless, because Brandy did not show it was reasonably probable she would have received a more favorable result had the trial court made the five findings.

In effect, the court rewrote the statute. In particular, the court ignored the trial court's failure to make a finding as to whether "any other factors the court deems relevant" existed concerning voluntariness.

Brandy contended on appeal that the Agreement was involuntary because seven days did not elapse between the day she first saw the draft and the day she signed, as required under a former section of the Family Code.[15]

The court ruled that claim failed because as to Premarital Agreements which were signed before the statute was amended, under *In re Marriage of Cadwell-Faso & Faso*, the seven-day requirement does not apply to parties who were represented by counsel. The version of the statute in force at the time the parties executed the premarital agreement governs. *Knapp v. Ginsberg*.[16] [17]

No Duress and Coercion?

Brandy asserted she signed the Agreement under duress. The appellate court stated that she "*included little argument directed to that issue*."

The court held Brandy "*may have been presented with the draft close to the date of the wedding, but she failed to show inequality of bargaining power or inadequate disclosure of assets, and the trial court found her failure to understand the agreement was due to her own neglect.*"

While California law applies commercial contract law to premarital agreement cases, Brandy's case illustrates that the bargaining position of parties who are negotiating the terms of a premarital agreement differs from those in a commercial context. Proof of coercion in the signing of a premarital agreement may be shown through factors "*uniquely probative of coercion*" in the premarital agreement context.[18]

In the case of *In re Marriage of Hill and Dittmer*, the court listed several factors that may establish coercion, including signing at a time in proximity to the wedding date, a lack of opportunity to consult counsel, inequality of bargaining power, and whether a party fully understood rights being waived or the intent of the agreement.[19]

Conclusion

Brandy trusted her attorney to see to it that the offending terms were redacted from the Agreement. She trusted Scott's attorney to warn her before signing if the Agreement still contained the waivers she believed had been redacted.

Additionally, she trusted her fiancée to disclose to her if the terms of the revised Agreement did not reflect the terms they discussed.

Scott and Ross stood silent at the signing conference, and Brandy signed. She discovered the Agreement as signed waived her rights to Scott's estate three years later, after his funeral.

The *Eskra* case is a sobering decision. It certainly is not a decision sympathetic to a bride who signed a premarital agreement without reading it. Should our laws be more sympathetic in applying commercial contract law to parties signing premarital agreements?

When a bride-to-be signs a premarital agreement the day before her wedding in her fiancée's attorney's office without her counsel present, should her failure to read the agreement in that context constitute excusable neglect?

And, are the five findings on voluntariness as set forth in the Family Code required only if the trial court deems them relevant?[20]

As premarital agreements become more prevalent, it remains to be seen whether the holding in this controversial case will survive.

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[1] *Estate of Eskra*, May 3, 2022, 78 Cal.App.5th 209, 293 CalRptr.3d 370, Court of Appeal, First District, Division 5. Note: The California Courts of Appeal are the largest intermediate appellate court system in the U.S. with 106 justices serving. The courts are divided by county lines into six districts. The term of each justice is 12 years. Each justice must have been an attorney for ten years before serving. Elections for Court of Appeals justices are voted on only by the residents of their district.

To date, no incumbent has ever lost an election or been denied retention. The application of stare decisis to the decisions of the Courts of Appeal in California is remarkable. While decisions of the California Supreme Court are binding on all

courts, decisions of the Courts of Appeal are binding only upon Superior Courts. They are not binding between divisions or even between panels in the same division.

See McCallum v. McCallum, 190 Cal. App. 3d 308, 315 (1987) FN 4, and Shatz, Benjamin; "*What Every Lawyer Should Know about Stare Decisis*", April 2008, V. 28, No. 4, L.A. County Bar E-Pub. A Superior Court facing conflicting court of appeal decisions may follow either district's decision. *Auto Equity Sales, Inc., et al., v. Superior Court*, 57 Cal.2d 45 (1962).

[2] Family Law Code § 1615.4. A premarital agreement is not enforceable if the party against whom enforcement is sought proves either of the following: That party did not execute the agreement voluntarily; or, the agreement was unconscionable when it was executed and, before execution of the agreement, all of the following applied to that party:

(A) That party was not provided a fair, reasonable, and full disclosure of the property or financial obligations of the other party.

(B) That party did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

(C) That party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(a) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(b) For the purposes of subdivision (a), it shall be deemed that a premarital agreement was not executed voluntarily unless the court finds in writing or on the record all of the following:

(1) The party against whom enforcement is sought was represented by independent legal counsel at the time of signing the agreement or, after being advised to seek independent legal counsel, expressly waived, in a separate writing, representation by independent legal counsel.

(2) The party against whom enforcement is sought had not less than seven calendar days between the time that party was first presented with the agreement and advised to seek independent legal counsel and the time the agreement was signed.

(3) The party against whom enforcement is sought, if unrepresented by legal counsel, was fully informed of the terms and basic effect of the agreement as well as the rights and obligations he or she was giving up by signing the agreement, and was proficient in the language in which the explanation of the party's rights was conducted and in which the agreement was written. The explanation of the rights and obligations relinquished shall be memorialized in writing and delivered to the party prior to signing the agreement. The unrepresented party shall, on or before the signing of the premarital agreement, execute a document declaring that he or she received the information required by this paragraph and indicating who provided that information. (4) The agreement and the writings executed pursuant to paragraphs (1) and (3) were not executed under duress, fraud, or undue influence, and the parties did not lack capacity to enter into the agreement.

(5) Any other factors the court deems relevant.

[3] Scott Eskra was well-known in Eureka, California, as an outdoorsman and athlete, having received a full baseball scholarship to the University of Mississippi. He died in a tragic accident while working as a tree-trimmer when a large tree fell on him. *www.legacy.com/us/obituaries/times-standard/name/scott-eskra-obituary?id=9680886.*

[4] Family Law Code § 1615.

[5] *Estate of Eskra, supra*; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2020) 9.55, 9.75.5, pp. 9-24, 9-36.

[6] *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261; 27 P.3d 702.

[7] Rest. 2d. Contracts, § 153, subd.(a).

[8] *Donovan v. RRL Corp., supra*.

[9] CA Civ § 1577 states: A Mistake of Fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in an unconscious ignorance of forgetfulness of a fact past or present, material to the contract; or, belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

[10] *Casey v. Proctor* (1963) 59 Cal.2d 97, 378 P.2d 579.

[11] *Donovon, supra,* at pg. 283.

[12] *Stewart v. Preston Pipeline Inc*. (2005) 134 Cal.App.4th 1565, 36 Cal.Rptr.3d 901 states that one who signs an instrument without reading it cannot rescind "in the absence of fraud, overreaching or excusable neglect…"at page 1588.

[13] *In re Marriage of Bonds* (2000) 24 Cal.4th 1, 26, 29; 5 P.3d 815.

[14] Family Law Code § 1615.4, above.

[15] Fam. Code §1615, subd. (c)(2)(A).

[16] *In re Marriage of Cadwell-Faso & Faso* (2011) 191 Cal.App.4th 945, 949; 119 Cal.Rptr.3d 818.

[17] *Knapp v. Ginsberg*, (2021) 67 Cal.App.5th 504; 282 Cal.Rptr.3d 403.

[18] *Bonds, supra*, at p. 26.

[19] *In re Marriage of Hill and Dittmer*, 202 Cal.App.4th 1046, 1052-1053; 136 Cal. Rptr.3d 700.

[20] Family Law Code Code § 1615.

Valley Retro

From the *Valley Times* of October 24, 1953...

"Seven a.m. saturation - This is view looking east on Ventura Boulevard just east of the 'Big Squeeze' bottleneck at Balboa Boulevard.

"Work-bound suburban residents are forced into two lanes, while two west-bound lanes are free of traffic.

"Suggested solution: Three-lane traffic eastbound in the mornings; three-lane traffic westbound in the evening."

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Valley Community Legal Foundation

San Fernando Valley Bar Association
founded in 1926

Saving MLCP-LA

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IN THE LAST TWO YEARS, A GLOBAL pandemic made clear what health advocates have known for decades: race and poverty have a direct—and devastating—impact on health.

As COVID-19 made its way across the nation, it did not exact an equal toll; Black Americans have been 3.5 times as likely as white Americans to die from the disease.

In California, Latinos between the ages of 35 to 49 have died of the virus at more than 5½ times the rate of white people the same age. A *New York Times* article about the virus's spread through Los Angeles' low-income neighborhoods said "*nowhere else in America can the unequal toll of the virus be felt more dramatically*."

What accounted for these disparities in Los Angeles County? A lack of economic opportunity, a dearth of affordable housing, widespread food insecurity, and a persistent lack of meaningful access to healthcare.

These are the "*social determinants*" of health, and they are the focus of a successful partnership between L.A. County and legal services organizations to improve health outcomes in low-income neighborhoods.

Medical Legal Community Partnership—LA (MLCP-LA), which launched in 2018, provides legal assistance to the most vulnerable patients in Los Angeles, seeking sustainable improvements in the lives of individuals who suffer multiple social and economic stressors.

In just four years, MLCP-LA has opened nearly 12,000 cases, helping people to access critical benefits, avoid eviction, find safety and stability after domestic violence, eliminate crippling medical debt, and address habitability issues like lead paint.

More than 65 percent of patients who benefitted from MLCP legal services are Latinx, and 13 percent are Black. They live in some of the most vulnerable communities in Los Angeles County, including South Los Angeles and the Antelope Valley. And the help they received had a profound impact on their lives.

Joe Chavez is one of these patients. Chavez was in the hospital when he learned he would no longer receive his $221 monthly General Relief check and would have to enroll in a welfare-to-work program in order to get assistance. On a good day, Joe can walk with a cane.

In addition to liver cancer and diabetes, he is also living with serious mental illness—conditions that had in the past exempted him from the welfare work requirement.

Losing the General Relief subsidy also put his housing in jeopardy, as Joe depends on a Section 8 subsidy, and uses the general relief funds to help pay his portion of the rent.

At the hospital, Chavez was introduced to a Community Health Worker who had been trained as part of MLCP-LA to recognize legal issues impacting patients.

She referred Chavez to an NLSLA attorney who quickly got his benefits reinstated, and also began the process of applying for Social Security Income—a more robust federal subsidy. "*It was like somebody pulling you out of water*," Chavez said. "*It gave me hope*."

The project's success has shown us that the law can be a powerful tool in addressing underlying issues that may be causing or exacerbating health problems.

And yet at this critical moment, when health disparities are more apparent than they have ever been before, MLCP-LA may have to close its doors.

Major reforms to the state's health services delivery model have eliminated the funding for MLCP-LA, and unless Los Angeles County finds an alternate source of funding, the project will disappear.

MLCP-LA is a remarkably cost-effective project. For just $1.75 million each year, L.A. County has connected thousands of people to the region's most effective nonprofit lawyers, who have removed significant barriers to their health and wellbeing.

What's more, these lawyers have saved Los Angeles County vast sums of money by preventing circumstances—like homelessness, hospitalization, and mental health emergencies—that drain local resources. Another cost-saving aspect of the MLCP-LA project is its success enrolling patients in state- and federally-funded benefits like SSI, CalFresh, full-scope Medi-Cal, and Medicare, which significantly improve their circumstances while also alleviating county cost burdens.

MLCP-LA is a collaboration between Neighborhood Legal Services of Los Angeles County (NLSLA), Legal Aid Foundation of Los Angeles (LAFLA), Bet Tzedek Legal Services, Mental Health Advocacy Services and the LA County Department of Health Services.

A significant number of patients referred to legal services through MLCP-LA had never before accessed legal services, meaning the project opened a critical new portal through which people living in poverty can access legal help.

Had they not been connected to legal aid through their medical providers, their legal issues would have remained unresolved, continuing to exacerbate with time and deepening the already shameful disparities that have made poverty the single greatest predictor of negative health outcomes.

What would happen to patients like Joe if the MLCP-LA were to vanish? And how will we unravel the shameful health disparities that were brought into such stark relief by the pandemic?

This is the moment to expand projects like MLCP-LA, not eliminate them.

The pandemic showed us that a failure to address disparities in health can mean the difference between life and death. It would be unconscionable to turn our back on one of the only programs in the County seeking to address those disparities directly.

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