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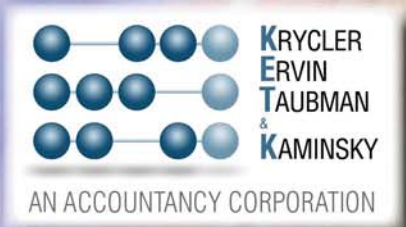
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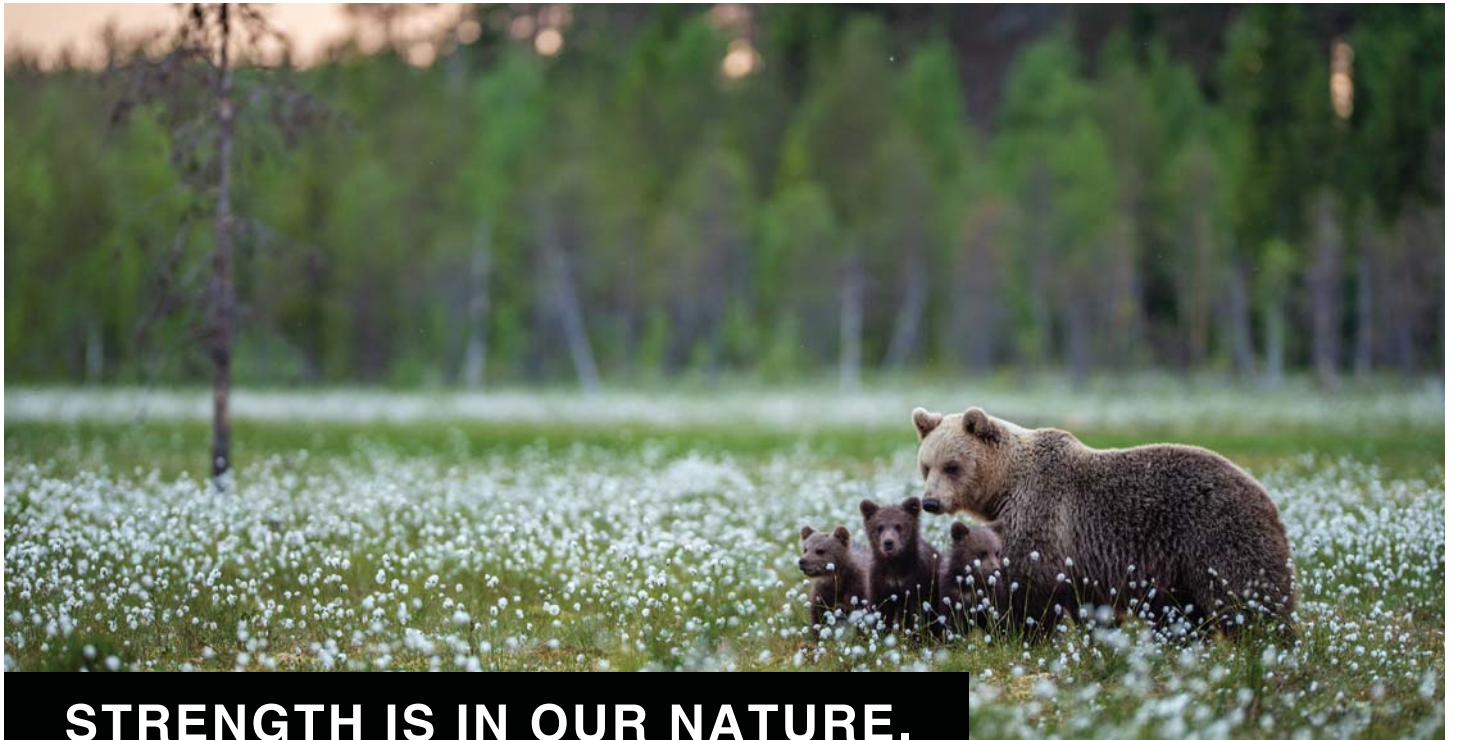


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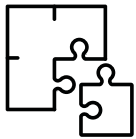
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No Excuses!

IT'S THAT TIME AGAIN. ANOTHER year receding into the rear-view mirror and a standard, 12-month, 24/7 'blank slate' version waiting in the wings with questions aplenty as to what it will hold.

Frankly, I have absolutely no clue, so off we go on an entirely different topic—boredom.

I take issue with those sad souls who get bored easily, a stance also held by the Austrian-born actress Hedy Lamarr who once stated that, *"I can excuse everything but boredom. Boring people don't have to stay that way."*

Lamarr was not only strikingly beautiful, but brilliant, as well. Vocally opposed to Hitler and the Nazis, in 1937, she fled Germany and her successful career there for the U.S.

Possessed of an exceptionally high IQ and an interest in *"tinkering,"* she filled her spare time between filming with various hobbies and ideas, which included developing a traffic light, and a tablet that would dissolve in water to create a carbonated drink—a product that, years later, became known as *'Fizzies.'*

Although without formal training or education, at the beginning of World War II, she and avant-garde composer and pianist George Antheil developed a radio guidance system for Allied torpedoes that used spread spectrum and frequency-hopping technology to defeat the threat of jamming by Axis ships.

They were granted U.S. Patent 2,292,387 in August 1942, and,

though the U.S. Navy did not adopt the technology until years later, the principles of their work are now incorporated into Bluetooth and GPS technology, and form the basis of the technology currently used in the legacy versions of CDMA and Wi-Fi.



In 1997, Lamarr and Antheil received the Electronic Frontier Foundation's Pioneer Award and the Invention Convention's Bulbie Gness Spirit of Achievement Bronze Award, which is awarded given to individuals *"whose creative lifetime achievements in the arts, sciences, business, or invention fields have significantly contributed to society."*

MICHAEL D. WHITE
SFVBA Communications
Manager




michael@sfvba.org



In 2014, Lamarr and Antheil were both posthumously inducted into the National Inventors Hall of Fame.

Hedy Lamarr was never bored. She filled her spare moments with energy and imagination.

Perhaps all of us should look back at the past 12 months, log the squandered opportunities, and pledge to ourselves, if no one else, that next year, we'll invest more time being creative and less time enamored with Tik-Tok, watching cat videos on YouTube, or being 'bored.'

A Happy and More Creative New Year to all! Macrame, anyone? 

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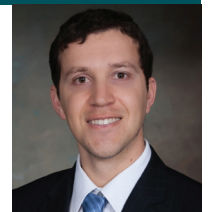
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11	12	WEBINAR Probate and Estate Planning Section Medi Cal Planning and Recovery Under the New Asset Limits 12:00 NOON Medi Cal has always had a low nonexempt asset limit of \$2,000 for an individual and \$3,000 for a couple. That limit was substantially increased in July 2022, and on January 1, 2024, it goes away completely. In this presentation, Peter Stern will summarize the new limits, show what the hurdles are to getting on Medi Cal, and explain Medi Cal clawback law. (1 MCLE Hour) See ad on page 33		14	15	16	17		
		ZOOM MEETING 19 Mock Trial Committee 6:30 PM		21	22	23	24		
			20						
				27	WEBINAR 28 Business Law and Real Property Section Franchising 12:00 NOON David Gurnick gives the latest updates regarding franchising. (1 MCLE Hour)		29	30	31



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By Karine Karadjian

The Changing Landscape of Bankruptcy:

New California Exemptions

Originally sponsored by the National Association of Consumer Bankruptcy Attorneys, California Senate Bill 1099 takes effect on January 1 and impacts the exemptions to the state's bankruptcy exemptions.



S ENATE BILL 1099 WAS INTRODUCED BY California State Senator Bob Wieckowski in February 2022 and passed in August 2022.

It passed the Assembly by a vote of 53-12 and the Senate by a vote of 31-9.

SB 1099 was summarized as “*an act to amend Section 2983.3 of the Civil Code, to amend Sections 703.140, 704.010, 704.050, and 704.113 of, and to add Section 704.111 to, the Code of Civil Procedure, and to amend Section 22329 of the Financial Code, relating to bankruptcy.*”¹

Sponsored by the NACBA—the National Association of Consumer Bankruptcy Attorneys—the bill was signed into law by Governor Newsom on September 29 and will become effective January 1, 2023.

This article will explore the major changes in California exemptions as a result of SB 1099, as well as their practical application in consumer bankruptcies filed on or after January 1.

To better understand the importance of and applications of the changes to the exemptions, a brief background look at the exemptions available to consumers in California filing for bankruptcy may be helpful.

The exemptions are available via two sets in the California Code of Civil Procedure.²

Those two sets cannot be mixed; the debtor must choose either Section 703 or 704 exemptions.

Section 703 exemptions offer a larger ‘*wildcard*’ which can be used to exempt a wide variety of assets, ranging from cash to money in bank accounts to anticipated tax refunds and much more, while Section 704 exemptions lack the ‘*wildcard*’ but offer a generous homestead exemption, and thus are used when the debtor has significant equity in their primary residence.^{3 4}

SB 1099 will bring several changes in both sets of exemptions with a summary of some of those changes provided below.

Motor Vehicle Exemption

SB 1099 will increase the motor vehicle exemption to \$7,500.00 for both sets of exemptions via amendments to the CCP.⁵

Moreover, SB 1099 creates a new exemption, codified in the Code fully exempting vehicles that are converted for use by a disabled debtor, spouse, or dependent. There is yet

another consumer win added through SB 1099, and that is the “*ride through*” option being restored for vehicles.⁶

In other words, vehicle lenders will no longer be able to force debtors into reaffirmation agreements by threatening a repossession for failure to reaffirm.

Both the CCP and the Financial Code were thus amended, and the SB 1099’s revisions to the necessary provisions, mandate that a conditional sales contract must contain and will not exclude a bankruptcy filing from the type of default that allows a secured creditor to repossess and liquidate collateral.^{7 8 9}

The ride-through and elimination of forced reaffirmations will allow the debtor to negotiate a better rate as incentive to reaffirm—for example, debtors will be able to negotiate lower interest rates and lower monthly payments and get more favorable terms for their vehicle loan.

This is a welcome change for consumers, since certain creditors previously insisted on forcing debtors to sign reaffirmations if they wanted to retain their vehicle, even if they were current on their payments.

While reaffirmations have certain benefits such as the reporting of payments on debtor’s credit report, which may help rebuild credit post-bankruptcy, they are generally not favored by consumer attorneys.

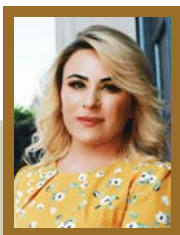
This is true mainly because the debtor will be held liable for the balance of the auto loan and exposed to a possible deficiency balance should something happen to the vehicle down the line. If no reaffirmation is signed, the debtor will be able to walk away from the vehicle should something happen in the future without the liability of a deficiency balance.

Post-Petition Appreciation Exemption

In 2021, new homestead exemptions took effect in California thanks to AB 1885 via the Code of Civil Procedure, greatly increasing the amount of equity debtors could protect in their homes.¹⁰

However, post-petition appreciation remained a grey area, with some trustees arguing that they could go after the portion that exceeded the exemption cap even if the home appreciated post filing. SB 1099 added CCP § 703.140(c) to fix this issue.

Thus, for cases filed January 1, 2023 and after, any post-petition appreciation for a home with equity that is fully exempted on the petition date is exempt, and the trustee will not be able to sell those homes.¹¹



Karine Karadjian is an attorney, mediator, and mediation consultant focused on bankruptcy and debt settlement, personal injury, and employment law matters. She has her own practice and handles cases in Los Angeles and Orange County. She can be reached at karine@kelawfirm.com.

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Under AB 1885, initial numbers were at a \$300,000 floor and \$600,000 ceiling, county based—countywide median sale price for a single family home in the prior calendar year—and adjusted for inflation every year.

The January 1, 2022, an adjustment increased the floor to \$313,200.00 and the ceiling to \$626,400.

There are certain instances in which the homestead exemption is limited if 11 U.S.C. applies. In those instances, the current cap, as of November 2022, is \$189,050.¹²

The limitations in 11 U.S.C., although not new, should be reviewed carefully since they severely limit the homestead exemption and can result in a malpractice claim if debtor's attorney does not do a proper analysis that leaves the debtor's home exposed.¹³

Under 11 U.S.C., the exemption will be capped at \$189,050—this figure is current as of November 2022 and is regularly adjusted for inflation, while attorneys should make sure they check current figures as of date of filing—if the property interest was acquired by the debtor less than 1,215 days prior to bankruptcy filing.¹⁴

If interest was transferred from debtor's previous principal residence, which was acquired prior to the beginning of the 1,215 day period, into debtor's current principal residence within California, then the new higher exemption amounts will be available.

Thus, for example, if debtor seeks to file for bankruptcy in March 2021, and would like to claim the homestead exemption on the property purchased in November 2020, and that exemption was not rolled over from the sale of his previous principal residence in California, the exemption will be capped at \$189,050.

If, however, the previous primary residence was sold in October 2020 and the new residence had been acquired in March 2016, then a claim could be made for the new homestead exemption at the higher amount, because the previous home was purchased more than 1,215 days previous, and the interest from the previous principal residence within California was transferred over into the new, that is, current principal residence.

If, however, the interest was transferred from a different state—debtor sold his primary residence in Nevada in October 2020 and purchased a home in California in November 2020, for example—the debtor would not be able to use the new higher homestead exemption, and will be capped at \$189,050, or whatever the cap amount is at the time of filing.

Under 11 U.S.C., the homestead exemption will also be capped at \$189,050 should the court determine that after notice and a hearing that the debtor has been convicted of a felony or the debtor owes a debt arising out of certain federal securities violations, intentional torts, and fraud, RICO violations, among other serious violations of the law.¹⁵

The exhaustive list is within the language of the statute, but one that may come up more often than the rest is the Section in as it relates to debt arising from “*any criminal act, intentional tort, or willful or reckless misconduct that cause serious physical injury or death to another individual in the preceding 5 years.*”¹⁶

Scholarshare Account Exemptions

Funds held in an account owned by the debtor and established pursuant to the Golden State Scholarshare Trust Act is exempt subject to the following limits:

- The amount exempted for contributions to an account during the 365 day period prior to the date of the filing of the bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under the Internal Revenue Code (IRC).¹⁷
- The amount exempted for contributions to an account during the period commencing 730 days prior to and ending 366 days prior to the filing of the bankruptcy, in the aggregate during this period, shall not exceed the amount of the annual gift tax exclusion under the IRC.¹⁸

Elimination of Spousal Waiver

A debtor who is living separate and apart from their non-filing spouse will no longer be required to obtain a waiver from the non-filing spouse to elect exemptions.

There is an exception if the spouses share ownership of property that could be protected by a homestead exemption.¹⁹

Exemption for Vacation and Sick Pay, and Family Leave

SB 1099 creates a new exemption for an aggregate amount of \$7,500.00 in vacation credits, accrued, unused, vacation pay, sick leave, family leave, or wages, as laid out in the California Code of Civil Procedure.²⁰

Since 704 had a similar provision, SB 1099 amends the CCP to expand the types of wage-related benefits exempted and limits the aggregate exemptions to \$7,500.00

However, the 704 exemption is applicable only to protect state and other public employees.²¹

The 703 set does not have this limitation and is available to private sector employees as well.

Exemption in Employee Settlement Agreements

SB 1099 creates a new exemption for payment from settlement agreements arising from debtor’s workplace, such as workplace harassment, wrongful termination, etc. and is codified under the CCP.²²

Unfortunately, there is no 704 exemption available for this.

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Exemption for Alimony, Maintenance, and Support

SB 1099 adds an exemption for reasonably necessary alimony, support, and separate maintenance in the CCP.²³

This exemption already exists under the 703 set, as laid out in the California Code of Civil Procedure.²⁴

Other Legislation of Importance

Although the focus of this article is mainly SB 1099, there are a few additional pieces of legislation which will become law on January 1, 2023, and will prove helpful to consumers.

One such example is SB 1200, which will limit renewals for judgments on medical debt if the principal unsatisfied is under \$200,000, and personal debt, if the principal unsatisfied is under \$50,000. In these cases, the judgments will be limited to a single five (5) year renewal.²⁵

Limits on interest on such judgments entered or renewed after January 1, 2023, will be limited to 5 percent instead of the previous statutory 10 percent.²⁶

Personal debt includes transactions involving money, property, insurance, or services primarily for a debtor's personal, family, or household purposes, while debts resulting from torts, fraud, unpaid wages, damages, or penalties owed to an employee are excluded.²⁷

Another important win for consumers was AB 2463, which took effect on January 1, 2021.

Pursuant to that law, the principal residence of a debtor could not be subject to sale under execution of a judgment on consumer debt unless the debt was secured by the residence when incurred.²⁸

The exemptions that were introduced in 2020 created a favorable climate for homeowner debtors and consumers in bankruptcy overall with SB 1099 going even further in offering additional legal protections to consumers.


Exemptions and Nuance

Debtor bankruptcy attorneys should familiarize themselves

with the exemptions and nuances that can best protect their clients and their assets, and themselves against possible malpractice claims—for example, it is a fact that 11 U.S.C. 529 caps with regard to the 1,215 day rule, are appearing more and more often.

The National Association of Consumer Bankruptcy Attorneys offers several helpful webinars on the topic that can be accessed through its website for those that are interested in learning more.²⁹

The language in the text of SB 1099 and CCP §§ 703 and 703 is also of great importance, as there are several exceptions and limitations to keep in mind.

The bottom line is to remember that the key to a successful bankruptcy is proper planning, proper disclosures, and proper exemption application. 

¹ Senate Bill No. 1099, Chapter 716.

² California Code of Civil Procedure §§ 703.140 or 704.010 et seq.

³ *Id.* § 703.140(b)(5).

⁴ *Id.* § 704.010 et seq.

⁵ *Id.* § 703.140(b)(2) and CCP 704.010.

⁶ *Id.* 703.140(b)(9) and CCP 704.050(b).

⁷ *Id.* § 2983.3(a)(2) and California Financial Code § 22329(b)(2).

⁸ *Id.* § 2983.3(a)(2).

⁹ California Financial Code § 22329(b)(2).

¹⁰ California Code of Civil Procedure § 704.730.

¹¹ *Id.* § 703.140(c).

¹² 11 U.S.C. 522(p) or 11 U.S.C. 522(q).

¹³ *Id.*

¹⁴ *Id.* § 522(p)(1).

¹⁵ *Id.* § 522(q).

¹⁶ *Id.* § 522(q)(1)(B)(iv)

¹⁷ Internal Revenue Code of 1986, Section 2503(b).

¹⁸ *Id.*

¹⁹ California Code of Civil Procedure § 703.140(b)

²⁰ *Id.* § 703.140(b)(10)(F).

²¹ *Id.* § 704.113

²² *Id.* § 703.140(b)(11)(B).

²³ *Id.* § 704.111.

²⁴ *Id.* § 703.140(b)(10)(D).

²⁵ *Id.* § 683.110(c).

²⁶ *Id.* § 685.010(a)(2)(A).

²⁷ *Id.* § 683.110(d)(2).

²⁸ *Id.* § 699.730(a).

²⁹ www.nacba.org.

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The Changing Landscape of Bankruptcy: New California Exemptions

Test No. 170

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.

- SB 1099 changes are effective immediately and can be used for bankruptcy cases filed in 2022. True False
- SB 1099 allows an unlimited motor vehicle exemption. True False
- 11 U.S.C. § 522(p)(1) caps the homestead exemption to \$189,050, as of November 2022, if the property interest was acquired by the debtor less than 1,215 days prior to bankruptcy filing unless it was transferred from debtor's previous principal residence (which was acquired prior to the beginning of the 1,215 day period). True False
- SB 1099 allows a ride through for motor vehicles, and no forced reaffirmations. True False
- SB 1099 is more favorable to creditors/lenders than to consumers. True False
- Debtor's felony conviction has no bearing on the amount of homestead exemption debtor gets. True False
- For a case filed in November 2022, a debtor in Los Angeles County has \$650,000.00 equity in their primary residence, only \$600,000 of it is exempt. True False
- CCP § 704 exemptions can be mixed with CCP 703 exemptions in bankruptcy. True False
- SB 1099 fully exempts vehicles that are converted for use by a disabled debtor, spouse, or dependent. True False
- Per the newly enacted CCP § 703.140(c), for cases filed January 1, 2023 and after, any post-petition appreciation for a home with equity that is fully exempted on the bankruptcy petition date is exempt. True False
- SB 1099 creates a new exemption for payment from settlement agreements arising from debtor's workplace and it is codified in CCP § 704. True False
- SB 1099 made amendments to CCP § 2983.3 and Financial Code Section 22329 as they relate to bankruptcy. True False
- The current floor for a homestead exemption in California is \$300,000. True False
- SB 1099 adds an exemption for reasonably necessary alimony, support, and separate maintenance in CCP § 704.111. True False
- The new ride through provisions under SB 1099 will give debtors an advantage in negotiating better auto loan terms as incentive to reaffirm. True False
- 704 exemptions for wage-related benefits are limited to an aggregate \$7,500 and applicable to both private and public employees. True False
- Under SB 1200, judgments on medical debt where the principal unsatisfied is under \$200,000 will be limited to one 5 year renewal. True False
- Under SB 1200, judgments on personal debt where the principal unsatisfied is under \$50,000.00 will be limited to 7 percent interest if entered or renewed after January 1, 2023. True False
- The statutory interest on judgments stemming from consumer debt is 10 percent in California. True False
- If a debtor has no real estate and has \$25,000 in a checking account, it is best to use CCP § 703 exemptions to utilize the wildcard. True False

The Changing Landscape of Bankruptcy: New California Exemptions

MCLE Answer Sheet No. 170

INSTRUCTIONS:

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

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ANSWERS:

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

1. True False

2. True False

3. True False

4. True False

5. True False

6. True False

7. True False

8. True False

9. True False

10. True False

11. True False

12. True False

13. True False

14. True False

15. True False

16. True False

17. True False

18. True False

19. True False

20. True False

By Michael D. White

Ying and Yang: *One Firm's Climb to Success*



Over the past six years, the partnership between attorneys Alexis D. James and Renee N. Noy has catapulted WorkWise Law into the top ranks of Southern California's employment law firms.

Photos by Michael Moghaddam

IT'S BEEN SAID THAT IN PERSONAL, intellectual, and professional circumstances, opposites attract and, often surprisingly, complement one another.

Such is the curious case of attorneys Alexis D. James and Renee N. Noy, who, as founding partners of WorkWise Law, PC, aligned to chart the upward trajectory of their Calabasas-based firm—one of the most highly regarded, and busiest, employment law defense firms in Southern California.

“I met Renee studying for the bar,” says James, WorkWise Managing Partner. “We walked into one of those Bar prep programs, and we commiserated and developed a friendship. Though we initially started work at separate firms, we had the opportunity to collaborate with each other on a number of employment cases. We developed a strong personal friendship that lasted for years and then about seven years ago, we made the decision to start our own firm together.

“After working on the plaintiff side suing companies for so many years, we realized we could be highly effective helping companies before they get sued. We observed large companies with HR departments and in-house counsel making mistake after mistake, so we questioned how smaller companies stood a chance.

“This was the underlying motivation for our firm, to level the playing field for small business owners who were just trying to do what they loved yet were unaware of all of California’s exacting labor and employment laws. When we opened,

we had one client, so it was a big leap of faith, but we are so glad we took a chance.”

True Opposites

In almost six years, the boutique firm is now serving more than 600 clients, namely small- and medium-sized businesses navigating their way through California’s complex maze of labor laws and regulations.

The firm has since added a senior associate, George Albutt, and paralegal, Lillian Jimenez, who have been instrumental in their success and growth.



This was the underlying motivation for our firm, to level the playing field for small business owners...”

“We are true opposites in our business perspective,” says James. “Renee is more of the dreamer and the entrepreneur, and I’m more risk averse. We’re a great Yin Yang in that sense. Renee is full of energy and has big ideas for building the business. And I’m the more practical one. If you can show me how something’s going to work and that we can afford all of our expenses, then I’m open to growth. Renee pushes us forward and I make sure we grow responsibly.”

However, even with their different approaches, the partners are exactly in step with each other on the firm’s values towards clients.

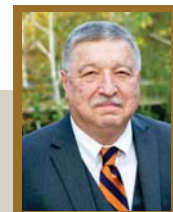
“Renee and I are equally minded in how we take care of our clients. We have this joke that we’ll get back to you within 24 hours. But if it’s been 24 minutes and you haven’t heard from us, call the police. We say this because we understand that when employer clients have a need, it’s usually pretty immediate,” says James.

“When someone shows up intoxicated on the job or has been caught embezzling funds, that’s something that cannot wait until tomorrow. It’s important that we handle the situation right now. We’ve heard from other clients who’ve been with the big national firms who say that they can’t get a call for two weeks from their attorney. So, we are really mindful of responding as soon as we can.”

Another curious thing about James’ and Noy’s paths to their firm is that they both intended to be environmental attorneys, saving the planet.

Employment law was never on their radar until they were both told to get civil litigation experience when the non-profits that they wanted to work for told them that they were not hiring attorneys straight out of law school.

Michael D. White is editor of *Valley Lawyer* magazine. He is the author of four published books and has worked in business journalism for more than 40 years. Before joining the staff of the SFVBA, he worked as Web Content Editor for the Los Angeles County Metropolitan Transportation Authority. He can be reached at michael@sfvba.org.





Noy's desire to pursue a career in environmental law led her to graduate from the University of Colorado summa cum laude and then westward to San Francisco and a JD from the University of California Hastings School of Law.

"Everything I did was based in the environmental movement. I worked at the White House under Al Gore; I worked for the Senate Committee on Environment and Public Works; and for countless environmental organizations."

Following a shift in majors from primatology to public policy at Duke University, a reverse migration brought James back across the country to Lewis & Clark Law School in Oregon, where she graduated with honors.

"They had the top environmental program in the country, and, at

the time, that's what I thought I wanted to do," says James. "So, I worked at the Natural Resources Defense Council, the Sierra Club, and the National Oceanographic & Atmospheric Administration and was really on that path of doing environmental law. It's interesting how Renee and I charted the same course but both gravitated towards employment law in practice."

James grew up the daughter of a transplanted English attorney and a New York-born Shakespearean scholar, while Noy's parents were, in her words, "a conservative CPA dad and a hippy mom."

Noy's dad, a CPA "was very conservative with a buttoned-down white shirt and my mom was a child of the '60s who went to UCLA, protested Vietnam, and, fought for change. She grew up with a very

trusting personality and sees the good in everyone. That's how I was raised, where everyone is trying to do the right thing.

"I use that approach in everything that I do. In the workplace investigations that I conduct, I walk in and assume the best in everyone and give people the benefit of the doubt. It has helped that I have practiced on both sides of the employment law equation because I see how people approach their workplaces with such different backgrounds and experiences."

Listening and Learning

James' approach to employment law issues is also born from listening to multiple perspectives.

She remembers being thirteen years old and listening to the Anita Hill/ Justice Thomas hearings on the

car radio on a trip back from San Diego. She started asking questions of her parents, who turned to each other and said, “Looks like she is going to be a lawyer too.”

In the beginning, in partial jest, James and Noy were accused of ‘going over to the Dark Side’ after they left their plaintiff-side practice. “We got a lot of that when we opened up our defense firm,” James says.

“My husband is a defense attorney, so we used to laugh that we had a mixed marriage when I was on the plaintiff side. But it didn’t take very long for me to change my viewpoint once I started really answering the employers’ questions and seeing things from their point of view.”

“I learned that many of them wanted to do the right thing, they just didn’t know all of the requirements of the law, especially regarding wage and hour issues, which are so specific. You either get it right or you don’t. A lot of it was

just ignorance of the law, not that the business owners wanted to cheat someone out of money.”

Noy’s revelation was based on similar narratives. “It became more evident that the vast majority of the situations I handled were for

companies that did not have the tools or resources to make legally compliant decisions.

For example, so many companies and HR professionals that we deposited in disability discrimination cases had never heard of the



interactive process and did not understand when an employee was entitled to a protected leave, etc. A few missteps along the way left the door open for the plaintiff to make a claim.”

According to James, married with two sons, “It is a lot easier to be on the plaintiff side, and I know that having been their advocate. Plaintiff attorneys know that there’s some point at which the employer is going to make a business decision to pay a little money to get out of the litigation versus the expense of taking it all the way through trial. In our office, we talk about legal extortion a lot.”

Says Noy, also a mother of two, “Because sometimes it feels that way to our clients that they genuinely are

looking out for their employees, and then when someone gets disgruntled about one thing or another, now they're looking at a very expensive lawsuit.

"Paying out settlement money can feel really disturbing and against their principles. So, I do like being on the side of representing the employer, just because half of the job is counseling, and getting them through the process of understanding what they're looking at in the future and getting them to be

okay with it. And if they want to fight it out, we present the best defense we can."

Every day, she says, "I'm apologizing to my clients on behalf of the State of California because the rules the state has for employers make it extremely difficult to do business. I always tell them, 'Thank goodness for the sunshine,' because nobody would run a business in California otherwise, as it is so hard with the regulations and

obligations these companies have to shoulder."

One of the first assignments handled by the firm involved the investigation of a company that had a lot of '20-somethings, says James, "we described it as if you could put a disco ball in the middle of the office. That was the kind of work environment that was going on there."

"It was an emergency training service company and one of the receptionists had complained of sexual harassment by one of the instructors. It was a great experience for us because this employee ultimately sued, but because the employer had taken every right step after the employee voiced her concerns, they were able to settle the case for nuisance value. We immediately saw the value that we could provide business owners if they were willing to take some proactive steps to protect their employees.

"We try to see things from all the different perspectives," she adds. "I think that helps us find some middle ground. Not all employees are complainers; and not all employers are looking to harm their workers. There's so much gray in the situations that we contend with, so we just tried to find common sense solutions to some very complex problems."

"Being a part of this firm's growth and seeing how many people and companies we have been able to help has been some of the most rewarding experiences of our lives," says Noy. "We can't wait to see what the future holds. 🏛️"

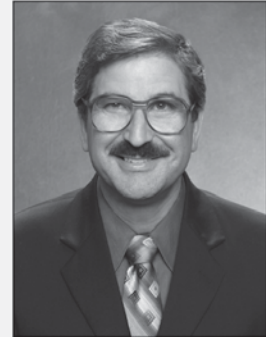


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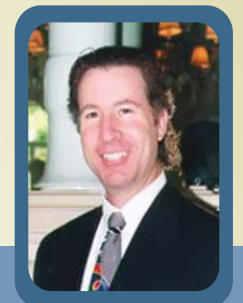
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By David Gurnick

California's New Motor Vehicle Board: Representing Car Makers and Dealers

A LITTLE-KNOWN CALIFORNIA AGENCY regulates supplier-dealer relationships in a big business—namely new car sales.¹

The agency is the California New Motor Vehicle Board, a part of the well-known Department of Motor Vehicles (DMV) that regulates car makers and their relationships with their dealers.

Car Manufacturers v. Their Dealers

Historically, car sales in the U.S. have been made through dealer franchises.²

In franchising, a manufacturer or supplier, called the franchisor, grants rights to an independent businessperson, called the franchisee or dealer, to market and sell the manufacturer's goods and services.

The manufacturer sets standards how the products will be distributed and serviced and lets the dealer adopt the product brand as the dealer's identification, or lets the dealer tell the public that the dealer is authorized to sell products of the brand.

Franchising lets a manufacturer establish distribution with the investment in facilities and personnel paid for largely by franchisees. Franchisees, as owners of each dealership, are motivated to grow profits by working to grow sales.

Franchisees or dealers are often more familiar with the locality where they operate, compared to the manufacturer. The franchisee or dealer enjoys the confidence and stability of being affiliated with an established product brand, rather than building a new brand.³



David Gurnick is a franchise attorney, business lawyer and litigator with Lewitt Hackman in Encino. He is a Certified State Bar of California Specialist in franchise and distribution law, and is also a Certified Franchise Executive, as designated by the International Franchise Association. He can be reached at dgurnick@lewitthackman.com.

In automobile distribution, a long history of legal warfare characterizes relationships between auto makers and their dealers.⁴

*“The public tends to see the dealer-manufacturer relationship as symbiotic and unitary: the manufacturer designs and builds vehicles; the dealer sells and repairs them, all to their greater economic advantage. Beneath the surface, however, is an uneasy, often roiling relationship.”*⁵

Regulatory History

In 1939, the Federal Trade Commission found that GM, Chrysler, Ford, and other car makers imposed unfair conditions on their dealers. The forced dealers to sign agreements that did not clearly define the parties’ rights and obligations.

They conducted unfair inspections of dealer facilities, forced dealers to buy more cars than could be sold, and forced dealers to invest in facilities without a long-term agreement and without assuring dealers would be provided enough cars to sell.⁶

In response to these concerns, in 1956, Congress enacted the Automobile Dealers’ Day in Court Act (DCA).⁷

The DCA requires car makers to act in good faith in performing or complying with the parties’ agreement, and in terminating, canceling, or not renewing a dealer franchise.⁸

The DCA lets dealers sue in federal court. But courts have tended to set a high bar for relief, ruling that a manufacturer must have engaged in coercion. Arbitrary or bad faith conduct by a manufacturer is not sufficient to obtain relief, without showing coercion.⁹

Limited effectiveness of the DCA led car dealers to seek protective legislation at the state level.¹⁰

Eventually, each state passed a law to protect automotive dealers in that state.¹¹

Most of these laws protect auto dealers from arbitrary terminations, non-renewals, encroachment on the dealer’s territory and other unfair tactics.

A New Motor Vehicle Board

In 1967, California established the New Car Dealers Policy and Appeals Board. Six years later, the agency was renamed the New Motor Vehicle Board.^{12 13}

Over time, the agency’s role evolved. Today, the Board hears and decides disputes whether there is good cause for a manufacturer to terminate or refuse to continue a dealer franchise, or good cause not to establish or relocate a motor vehicle dealership in a relevant market area, disputes regarding delivery and vehicle preparation obligations, and warranty reimbursement.¹⁴

The Board is an agency with nine members, four of whom must be licensed new motor vehicle dealers, each appointed by the Governor.

Five members are from the general public; three are appointed by the Governor, and one by the Senate Rules Committee, and one by the Speaker of the Assembly. At least one public member must be an attorney admitted to practice in California for at least ten years.¹⁵

The Board has jurisdiction over anyone applying for or holding a new motor vehicle dealer or manufacturer license. The Board’s jurisdiction is limited to matters within the scope of its authorizing statute.¹⁶

Courts have concurrent jurisdiction with the Board over disputes arising from the dealer franchise relationship.¹⁷

Two kinds of proceedings may be brought to the Board—a protest or a petition.

A protest is an action filed with the Board by a franchisee—that is, a dealer—asks the Board to decide a franchisor-franchisee dispute.¹⁸

A dealer may bring a protest to the Board against the new car manufacturer in the following circumstances:

- Protest the termination, non-renewal, replacement, or modification of a dealership as being without good cause.¹⁹
- Protest establishment or relocation of another dealership—or warranty service facility—in the same market area as the protesting dealer.²⁰
- Protest the reasonableness of the dealer’s obligations for preparation and delivery of newly purchased cars and the manufacturer’s compensation to the dealer.²¹
- Protest reduced time and compensation for warranty repairs;²²
- Protest disapproval of a dealer’s claim for payment under a manufacturer incentive program.²³

The Vehicle Code says the Board must hear and decide protests by a dealer.²⁴

Proceedings are scheduled and may be conducted before the Board, or may be referred to an Administrative Law Judge.

As a quasi-judicial body, the Board is empowered to administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses or production of documents. Its actions can be enforced in court.



In automobile distribution, a long history of legal warfare characterizes relationships between auto makers and their dealers.”

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A petition is a written request filed with the Board concerning activities or practices of an applicant or holder of a new car dealer license.²⁵

It can concern disputes between dealers or between a member of the public and a dealer.

In a petition proceeding, the Board can direct the Department of investigate and make a written report, conduct a mediation or arbitration or in some other way resolve differences of opinion or viewpoints between the public and a dealer, or direct the DMV to exercise authority it may have over licensing a dealer.²⁶

A protest or petition is an adversary proceeding. The Board, its Executive Director, or an Administrative Law Judge has authority to require the parties to engage in a settlement conference.²⁷

The Board can punish a party's failure to appear, or to be prepared, or to have authority to settle by suspending proceedings, dismissing a claim or requiring payment of the Board's costs and ruling that the offending party abandoned its claim. It may also issue subpoenas and authorize discovery.^{28 29}

For failure to comply with a subpoena or discovery procedures, a party may be sanctioned by being required to pay damages, attorney fees or being subject to injunctive relief.³⁰

The Vehicle Code authorizes a dealer or other Department of Motor Vehicles licensee who suffers loss due to another licensee's failure to comply with a requirement of the Code or a rule or decision of the Board, to recover damages, injunctive relief and attorney fees. An action for this relief must be brought in court.^{31 32}

A quorum is of three of the five Public Members for protests; a quorum is five of the nine members for protests.

Dealer members of the Board are not permitted to hear, comment, or advise public members on, or decide any matter involving a protest, unless the parties consent by stipulation.³³

Dealer members may take part in certain protests— Article V, RV matters, for example.

They may also participate in matters that do not involve a dispute between a franchisee and a franchisor, such as a petition by a member of the public or an appeal from a Department decision.

The Board has its own rules of procedure, found at Title 13 of the California Code of Regulations. Not unlike court rules, the Board's rules of procedure address a wide range of administrative matters and hearing procedures. 

¹ In 2021 U.S. consumers bought or leased more than 15 million new cars. The average transaction price was about \$45,000. U.S. Bureau of Transportation Statistics, Table 1-17 "New and Used Passenger Car and Light Truck Sales and Leases" (2021 data Rows 4 and 20) (www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles, last visited 10/22/22). According to the American Automotive Policy Council (AAPC), Chrysler, Ford and General Motors produced 5.8 million vehicles in the U.S. in 2018, employing 238,000 workers at

260 manufacturing and assembly facilities, labs, distribution centers and other facilities in 31 states, and sold these through nearly 9,700 car dealerships. AAPC claims U.S. automakers and their suppliers are the nation's largest manufacturing sector, responsible for 3 percent of U.S. GDP. AAPC, *State of the U.S. Automotive Industry 2020* at 6, 8. (www.americanautomakers.org/sites/default/files/AAPC%20ECR%20Q3%202020.pdf, last visited 10/22/22).

² See e.g., Harold Brown, Michael Dady et al, *Franchising: Realities and Remedies* § 7.04A. (2d Ed., 2021, Law Journal Press) (“As has been the case for the majority of the auto industry’s existence, new car dealerships operate as automobile manufacturer franchisees, entrusted with almost all new car retailing to consumers in the nation.”).

³ Jason R. Parnell and Robert W. Emerson, *Bankruptcies and Bailouts: the Continuing Impact of the Financial Crisis on the Franchise Auto Dealer Industry*, 21 U. Pa. J. Bus. L. 288, 305-306 (2018).

⁴ *American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal. App. 3d 983, 986-987.

⁵ *Alliance of Auto. Mfrs. v. Gwadosky*, 304 F. Supp. 2d 104, 106 (D. Maine 2004).

⁶ 1939 FTC Ann. Rep. 22, 25-26.

⁷ 15 U.S.C. §§ 1221-1225.

⁸ *Id.* § 1222.

⁹ *Wallace Motor Sales, Inc. v. Am. Motors Sales Corp.*, 780 F.2d 1049, 1056 (1st Cir. 1985) (summarizing case law in the circuits on duty of good faith under DCA); *Autohaus Brugger, Inc. v. Saab Motors, Inc.*, 567 F.2d 901, 911 (9th Cir. 1978) (an element of a DCA claim is lack of good faith in which coercion, intimidation, or threats thereof, are present).

¹⁰ *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 100-101 (1978) (disparity in bargaining power between manufacturers and dealers prompted Congress and states to pass legislation to protect car dealers from abusive and oppressive acts by manufacturers); Christian J. Scali, Halbert Rasmussen and Monica Baumann, *An American Solution: Automotive Franchise Laws Serve Local Communities and Consumers* 40 ABA Fran. L. J.665 (Spring 2021 (“the franchise system and franchise law are a result of a long history of conflict between manufacturers and dealers”); see also, Gordon L. Ohlsson, 2 *Business Torts* § 21.04 (2022). As a result of many years of urging by trade associations of automobile dealers, almost every state has a law protecting the dealers from unfair termination or from arbitrary actions of the franchisor.

¹¹ See, *Scali et al*, supra note 10, at 670. All states ultimately passed dealer protection laws.

¹² *Miller v. Superior Court* (1996) 50 Cal. App. 4th 1665, 1668 n.2.

¹³ *Id.*

¹⁴ Veh. Code § 3060; 3062, 3064, 3065; see also, *American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal. App. 3d 983, 986-987.

¹⁵ *Id.* § 3001.

¹⁶ *Hardin Oldsmobile v. Superior Court* (1997) 52 Cal. App 4th 585, 590 (the Board “is a quasi-judicial administrative agency of limited jurisdiction”). See e.g., *Tovas v. American Honda Motor Co.* (1997) 57 Cal. App. 4th 506, 508. The Board does not have jurisdiction over cause of action for interference based on tortious business practices independent of a franchise agreement.

¹⁷ Veh. Code 3050(e) (courts have concurrent jurisdiction over common law and statutory claims. For those claims, a party may bring an action in court. *Hardin Oldsmobile v. Superior Court* (1997) 52 Cal. App 4th 585, 591 (“The Legislature did not intend to replace the courts with the Board in presiding over traditional litigation involving a broad range of statutory and common law causes of action.”).

¹⁸ 13 Cal. Code of Regs. § 550(t).

¹⁹ Veh. Code § 3060.

²⁰ *Id.* § 3062.

²¹ *Id.* § 3064.

²² *Id.* § 3065.

²³ *Id.* § 3065.1. See also, *Mazda Motor of America, Inc. v. New Motor Vehicle Bd.* (2003) 110 Cal. App. 4th 1451, 1458. Summarizing disputes the Board is empowered to decide.

²⁴ *Id.* § 3050(d) provides for decision by the Board of a protest by a dealer under Vehicle Code Secs. 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076.

²⁵ *Id.* § 3050(b).

²⁶ *Id.* § 3050(b)(1) – (3). These provisions apply also with regard to other types of DMV licenses: manufacturer, manufacturer branch, distributor, distributor branch and representative. *Id.* They apply with regard to DMV’s authority to issue, renew, refuse to renew, suspend or revoke any such license. *Id.* See also, *Mazda Motor of America, Inc. v. Calif. New Motor Vehicle Bd.* (2003) 110 Cal. App. 4th 1451, 1454 (discussing the statute).

²⁷ *Id.* § 3050.4.

²⁸ *Id.* § 3050.4.

²⁹ *Id.* § 3050.1.

³⁰ *Id.* § 3050.2.

³¹ *Id.* § 11726.

³² *Id.* § 11726.

³³ *Id.* § 3066(d).

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FRAUD ANALYSIS





1. The SFVBA Board of Trustees. Those in attendance from left to right: Jessica Rosen, Minyong Lee, President-Elect Heather Glick-Atalla, President Matthew Breddan Treasurer Taylor Williams-Moniz, Valarie Dean, Joy Kraft Miles. Back row from left to right: Alan Eisner, Nolan Hiett, Chrystal Ferber, Kenny Brooks, Alex Hemmelgam, Kyle Ellis, Melanie Gardner-Pawlak, Alexander Kasendorf 2. The Reape-Rickett Law Firm with SFVBA President Matthew Breddan (front and center) 3. Valley Community Legal Foundation Board in attendance, from left to right: Stephen Holzer, Minyong Lee, Judge Virginia Keeny (V.P. Scholarships), Joy Kraft Miles (President), Alan Kassan. Back row left to right: Kyle Ellis, Judge Michael Amerian, Judge Firdaus Dordi (Co-Vice President Education) 4. Matthew Breddan gets sworn in as SFVBA President 5. SFVBA Past Presidents David Jones and Barry Goldberg 6. Judge Huey Cotton eulogizes beloved Past President Yi Sun Kim 7. President-Elect Heather Glick-Atalla, Nabil Atalla and Allan Sarver 8. SFVBA Trustee and M.C. Alan Eisner presents commendation to VCLF President Joy Kraft Miles 9. SFVBA Executive Director Rosie Soto Cohen flanked by Dmitry Gorin and Yasha Bronshteyn 10. Kraft Miles, ALC guests 11. From left to right: Monique Bryher, Mason Rashtian and Adam D.H. Grant (Grant/Shenon Emerald Sponsor) 12. SFVBA Trustee, VCLF President Joy Kraft Miles and family 13. Judge Michelle Short, Valarie Dean and Michelle Diaz 14. Steven and Lori Weiss 15. From left to right: Kenny Brooks, Marshall Cole (Nemeczek Cole, Platinum Sponsor) and Nathaniel Brown 16. Former SFVBA Trustees Steven Sepassi and Allan Sarver 17. Lauri Shahar and Silver Sponsor Ronna Lubash (Manufacturers Bank) 18. SFVBA Trustees Chrystal Ferber and Alex Hemmelgam (Lewitt Hackman firm, Diamond Sponsor) 19. Past President Barry Goldberg and Michelle Diaz 20. Trustee Minyong Lee and Lauren Killedjian 21. President Matthew Breddan and his law partner James Reape 22. Judge Jonathan Rosenbloom and Jana Garrotto 23. Debra Davis flanked by Zane Averbach and Alex Hemmelgam 24. SFVBA Past President Stephen Holzer and Cindy Elkins 25. SFVBA Director of Public Services Miguel Villatoro and SFVBA Executive Director Rosie Soto Cohen. Photos by Emily Goodman

Freelance Law: The Pros, the Cons, and How to Get Started

By Cate Giordano



SO YOU WANT TO HANG OUT your shingle and become a freelance lawyer?

You are not alone. There has been a dramatic increase in attorneys out independently and going freelance.

In an *Upwork* study, the share of non-temporary freelancers has grown to a new high with the percentage of non-temporary freelancers' workers climbing from 33.8 percent to 35.0 percent from 2020 to 2021. And this growing freelancer cohort is highly educated and skilled.

A freelance 'gig' as a lawyer is also known as contract lawyering.

What makes a freelance lawyer freelance as opposed to a solo practitioner? That all depends on whom you are servicing.

Generally speaking, solo practitioners work with non-legal clients from beginning to end of a case, and they have an interest

in a Lawyers Trust Account (IOLTA), while freelance, or contract lawyers, work for other attorneys, typically helping out with specific issues, and are not required to maintain a trust account as their work is highly transactional.

Hired by law firms or other legal offices as independent contractors, freelance lawyers do not directly represent clients.

Instead, freelancers perform many functions from documentation reviews to discovery, practice law, and legal research.

A freelance lawyer can choose their own clients, set their own rates, and work from home—or anywhere else in the world.

It sounds ideal, but it takes some planning and maintaining a high tolerance for risk.

Becoming a Freelance Attorney

Contracting as a lawyer has been

gaining popularity for some time, and the COVID-19 pandemic has accelerated the boom in the number of freelance attorneys.

Working as a freelance lawyer has several benefits, including both personal—working remotely to be with family—and professional—reducing burnout and avoiding exhausting caseloads.

Meanwhile, law firms and in-house counsel looking for contract help have their pick of highly qualified, experienced, and, in many cases, specialized lawyers.

Generally for a law firm or company, contracting with a lawyer will be less expensive than hiring outside counsel. With a demanding increase in legal work over the last two years and headlines like '*Gartner Survey Shows Corporate Lawyers Exhausted Since the Pandemic*,' the opportunities for contract lawyers have grown immensely.



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/>.

What Do Freelance Lawyers Do?

Firms with smaller legal staffs can rely on the services of freelance lawyers and paralegals for the help they need to reduce their need to hire additional full-time workers.

Lawyers can work independently on legal assignments on either a flat fee or hourly basis.

Freelancers usually work directly with the law firm or company legal department or the freelancer may work through a legal freelancing platform in numerous practice areas on projects including:

- **Appearance work.** Freelance attorneys may be hired as appearance council to appear in on behalf of another lawyer.

In such a circumstance, the freelance lawyer must be licensed in the jurisdiction in which they are making the appearance; and,

- **Written substantive work.** Such work could include discovery research, document review, filing motions, writing briefs, or drafting contracts. It could also include writing law firm marketing blogs.

The Benefits of Going Freelance

One of the main benefits of freelance lawyering is the flexibility it offers as they can set their own hours, work from home, and choose the cases they want to work on.

This can be an excellent perk for parents who wish to spend more time with their children, or those who want to avoid office politics sometimes associated with working at a firm.

Setting Your Schedule and Capacity

Freelancers can set their own office hours, no longer beholden to a M-F/9-5 routine.

This flexibility can be an excellent perk for parents who need to work around childcare schedules, or for people taking care of infirm relatives.

They can take on as many—or as few cases—as they desire, and work at a more relaxed pace or turn up the volume to ‘11,’ if so desired.

www.sfvba.org

Test out what works best, but be sure to set up systems that assist in handling the work.

You Get to Choose Your Clients and Projects

Freelancers can be choosy about who they work for and who they avoid, such as demanding clients or cases they are not passionate about.

This can be a refreshing change from working at a law firm as a freelancer can choose projects that are engaging and interesting. Taking on different types of work is a great way to get exposure and continue upskilling and learning.

Work from Anywhere

Via the Internet, freelancers can work from their couch, home office, a coffee shop, an Italian villa, or wherever the wind takes them.

Two reality checks and mental health notes on this point—first, don’t feel bad if the most exotic work location is at the local library using free Wifi; and, second, being able to just because you can doesn’t mean you should work during your vacation.

The Challenges of Freelancing

Freelancers are offered more flexibility than what they find in traditional job roles, but freelancing can also be challenging to maintain a work-life balance.

It can be easy to get wrapped up in work and forget to take breaks, so it is important to set boundaries and make time for yourself, or you’ll burn out quickly.

Some examples:

- **Overhead and Inconsistent Remuneration:** Responsibility for expenses, including health insurance, malpractice insurance, and business licenses are a reality when freelancing. Funds also need to be set aside money for retirement and savings.

In the beginning, income will be unpredictable, so it is wise to plan

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- Domestic Violence: Not Guilty, Jury Finding of Factual Innocence (San Fernando)
- \$50 Million Mortgage Fraud: Dismissed, Trial Court (Downtown, LA)
- DUI Case, Client Probation: Dismissed Search and Seizure (Long Beach)
- Numerous Sex Offense Accusations: Dismissed before Court (LA County)
- Several Multi-Kilo Drug Cases: Dismissed due to Violation of Rights (LA County)
- Misdemeanor Vehicular Manslaughter, multiple fatality: Not Guilty Verdict (San Fernando)
- Federal RICO prosecution: Not Guilty verdict on RICO and drug conspiracy charges (Downtown, LA)
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accordingly. It's recommended to have about six months of savings before striking out as a freelancer.

• **Less Predictability:** While working as much as one wants can be terrific, there are no assurances about how much—or what type of—work will be offered. The technical term in freelance jargon for this is *'feast or famine.'*

• **Less Administrative Help:** Unlike a law firm job, there won't be the valuable assistance of firm staff.

The good news is that with the gig-economy opening up for a variety of legal services, a freelance paralegal can be found to team up with for some projects.

• **Less Human Interaction:** Depending on where an individual falls on the introvert/extrovert scale, the fact that there is no office banter when freelancing could swing either as a pro or a con.

Maybe that is what is desired; some peace and quiet to focus solely on work during working hours. Or perhaps one finds that working for one's self can be lonely without occasional informal check-ins with a favorite coworker.

If a lack of interaction is an issue, a freelancer might consider working from a co-working office once a week to get their fill of office coffee and water cooler chat.

Basics of Setting Up a Freelance Practice

Start by listing the essential elements needed to practice as an independent.

Many lawyers who want to start an independent law firm have good ideas how to accomplish that, as the business of law is becoming ever more specialized.

Clients no longer hire one attorney for all of their legal matters; they hire an attorney that has excelled with experience and training in a specific area.

Thus, it is crucial to develop and hone experience by focusing on a specific area of the law.

Freelancers should not shy away from touting their valuable experience, knowledge, and skill, and, while it is obvious, it is worth saying that if one is good at the work they are doing, they will find more enjoyment in their freelance career.

It is advisable then to avoid spending time in areas of the law that lack appeal, and in which experience is lacking.

Whether document review or complex tax work, being oneself and doing what one knows best is key to finding fulfillment as a freelancer.

Obtain Malpractice Insurance

Freelancers are responsible for their own expenses, including health insurance, malpractice insurance, and business licenses as they are self-employed.

Malpractice insurance is an essential step in becoming a freelance lawyer as it protects the insured from any legal action that may arise due to their work.

There are several malpractice insurance providers for lawyers, while bar associations can help to find the sources. The American Bar Association's FAQs for malpractice insurance has proven to be a good source of information.

Have a Written Work Agreement

A freelance work agreement outlines the specific work to be done, the agreed-upon compensation, and the expectations of both the freelance lawyer and the hiring firm.

It is very important to have a freelance work agreement in place to avoid confusion about the terms of the engagement. That agreement can serve as a guide for how the work will be completed, and help resolve any disputes that might arise in the future.

Consider A Minimalist Tech Stack

You do not need much to start with—

the basics are a laptop and an internet connection.

Remember to keep overhead expenses as small and manageable as possible; they can always be upgraded.

Consider software that will make business run smoother and the quality of life better—accounting software or a client relationship manager, for example.

Some basic software that is necessary and can fit into every budget is a word processor like *Microsoft Office*, or *Google Workspace*, accounting, and project management software.

A client relationship management (CRM) program can be especially useful as it automates scheduling appointments and email follow-ups and offers e-signature solutions, thus reducing the amount of administrative work that otherwise would have needed to be done manually.

Develop a Business Plan

As with any business, it is important for freelancers to craft a strategy that chart how they market their services, how they will find clients, and how they will bill for their services.

The plan should identify the target market with an effective way to differentiate from other lawyers, and also include goals and how success will be measured.

Find a Mentor and Set Up a Website

Big law firms benefit from structured mentoring programs, but that doesn't mean a freelancer can't find a mentor as they embark on their path of independence.

Using networks can be used to seek out a mentor, who can guide in starting and growing a freelance practice by referring clients and advising on drafting contracts.

A website can provide a professional presence online, as well as give potential clients access to learn more about a freelancer's experience and contact information.

Websites are fairly inexpensive to create with little or no technical know-

how, and are useful in communicating a clear description of the freelancer's services, experience, and contact information. 'Turn-key' sites can also be acquired from *WordPress*, *SquareSpace*, or *Wix*.

Creating a *LinkedIn* profile is critical with up-to-date information, and a summary of experience and skills, and is a great way to connect with potential clients and referral sources.

Marketing for Freelance Lawyers

Now that a business plan is in place, it is time to start marketing the freelancer's law practice.

There are several ways to market the new business, including both online and offline methods, as an effective marketing plan to get clients as a freelancer is absolutely essential.

The end customer—big firms and private lawyers—may influence the marketing strategy, but the same basic principles apply to every freelance lawyer.

Some of the most effective marketing strategies for freelance lawyers include creating a website; writing content as a thought leader in a niche area of expertise; using social

media to network and share articles; adding profiles to online directories; and speaking at events.

Network

Networking is one of the most important things available to promote freelance lawyers.

Attend local bar associations meetings, join an online legal group, or even start a networking group to connect with other professionals and exchange referrals.

When a new client is landed, it is smart to follow up with them and ask for a referral.

It is important for freelancers to make sure any online profiles are polished and professional. This will help them stand out from the competition and make it easy for hiring attorneys to find them online.

They should also make sure that their *LinkedIn* profiles are up-to-date and include a summary of their experience and skills, as well as a link to their website and any articles or whitepapers you have written.

Testimonials and Online Directories

Freelancers can ask colleagues and

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Medi Cal Planning and Recovery Under the New Asset Limits

Medi Cal has always had a low nonexempt asset limit of \$2,000 for an individual and \$3,000 for a couple. That limit was substantially increased in July 2022, and on January 1, 2024, it goes away completely. In this presentation, Peter Stern will summarize the new limits, show what the hurdles are to getting on Medi Cal, and explain Medi Cal clawback law. (1 MCLE Hour)

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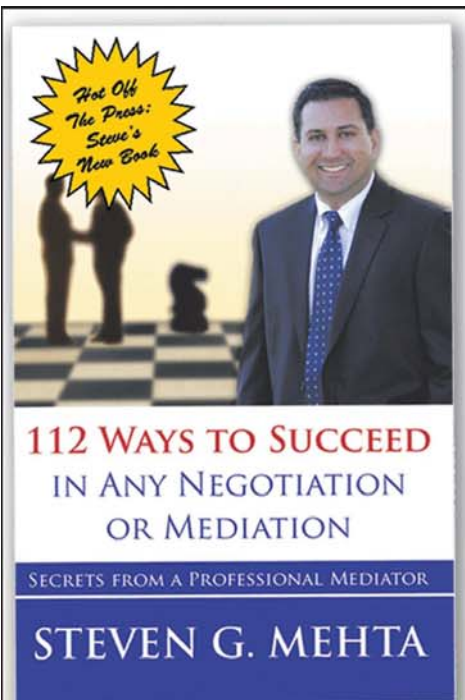
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clients to leave reviews on LinkedIn, while positive feedback from clients can be highlighted on a personal website.

When you are just starting, ask your old colleagues to write about their experience working with you. Social proof on your website and online profiles can help attract new clients.

Another effective way to market a freelance law practice is to join online directories.

Sites like *FindLaw*, *Nolo*, and *Avvo* allow potential clients to find attorneys in their area who practice the type of law they need, and leave reviews of the attorneys they work with.

Where to Find Work

According to *Finances Online*, more than 70 percent of freelance attorneys find jobs through online markets, gig economy websites, and other platforms.

Platforms connecting freelance lawyers can assist with client searches without the added worry of dealing with paperwork or guesswork.

Some examples:

- **LAWCLERK:** *LAWCLERK* provides freelancers with tools and software for a successful freelance website and is considered a top freelance site.

It handles tax reporting, hiring lawyers, and paying fees. This platform also offers a secure document library for securely sharing files.

- **FlexJobs:** Although it does not focus on attorneys, *FlexJobs* remains the most valuable freelance website in the field of law.

Through its freelance platform, *FlexJobs* provides more than 32,000 employment opportunities posted by 49,000 firms, and spends more than 100 combined hours reviewing clients every day for the best opportunities.

- **Lawyer Exchange:** *Lawyer Exchange* aims at bringing the gig economy into the legal field by combining lawyers' jobs with highly qualified and experienced legal professionals.

Lawyer Exchange's unique selling point is the availability of accessible legal professionals from all disciplines. New attorneys will find that many career options are available and that they can easily start a new project and gain real-life experience.

- **UpCounsel:** *UpCounsel* leverages the newest and most advanced technology to create an excellent freelance website for lawyers that offers freelance lawyers the opportunity to choose the client projects they are interested in.

- **InCloudCounsel:** This platform includes input from former 'Big Law' professionals, corporate lawyers, and engineering staff.


InCloudCounsel provides freelancers with the freedom and flexibility required to do as much work as possible in their schedule, all while working at their leisure.

- **Montage Legal Group:** The *Montage Legal Group* offers clients the opportunity to choose attorneys with extensive background in the law and judicial practice.

Montage Legal is an excellent freelance legal website with a high entry barrier. The website connects lawyers who have outstanding academic credentials from law schools such as Harvard and Georgetown.

- **LegalBee:** *LegalBee* is a free website that provides legal advice to lawyers in transitional careers.

Founded in 2010, the site defines itself as a law firm specializing in hiring attorneys in permanent and freelance positions within established law firms.

It's 'Hive' component provides various legal services for individuals who need help with a scheduling conflict. 



SHARED LIABILITY: A young man went for a ride on his new Yamaha dirt bike and was injured when the bike’s throttle slipped, the handlebars twisted, and he fell, suffering a fractured a leg, a separated shoulder, and other injuries. As a result, he sued the bike’s manufacturers, as well as the American distributor and dealer.

The appellate court found in his favor, clarifying the responsibilities of each party in the supply chain, as it reversed the trial court’s decision, and ruled that Yamaha has a “*non-delegable duty*” to assure its dirt bikes are assembled properly.



During the trial, the jury learned that Yamaha Japan does not fully assemble the bikes, but passes its partially assembled vehicles to distributors, who give them to dealers who complete the assembly. The plaintiff had sued all four companies in the chain for negligence, strict product liability—namely manufacturing, design defect, a failure to warn liabilities—and breach of implied warranty.

At trial, the Superior Court of Riverside County found in favor of Yamaha. But in a 2-to-1 decision, the justices in Division Two of the Fourth District Court of Appeal reversed part of the trial court’s decision.

According to Law Commentary, the reversal was largely based on the court’s interpretation of *Vandermark v. Ford Motor Company*, which places “*responsibility for defects, whether negligently or non-negligently caused, on the manufacturer of the completed product... regardless of what part of the manufacturing process the manufacturer chooses to delegate to third parties.*”

ATTORNEY-CLIENT PRIVILEGE: The U.S. Supreme Court has agreed to hear a case involving the application of the attorney-client privilege, which protects the confidentiality of communications between attorneys and their clients.

The grant of certiorari was filed by the California Lawyers Association (CLA), which filed an amicus brief in June urging the Court to hear the case.



The case—*In re Grand Jury*, 23 F.4th 1088 (9th Cir. 2022)—involves the test that applies to communications between lawyers and their clients involving both legal and non-legal purposes, known as dual-purpose communications, and when those communications are protected by the attorney-client privilege.

In that case, the Ninth U.S. Circuit Court of Appeals had held that a dual-purpose communication is only privileged “*when the most significant purpose is legal.*”

A LACK OF WORK: New data gathered in the first half of 2022 by the Wells Fargo’s Legal Specialty Group has found that easing client demand amid rising costs is leaving newly hired lawyers with a lack of work.

According to the data, in 2021, a boom in corporate work prompted firms to build up their attorney numbers, with lawyer headcount increasing by over 5 percent year-over-year among the 120 large, mid-size and regional firms surveyed by Wells Fargo.

However, slowing deal work has seen lawyer productivity drop to almost 5 percent compared to a year ago.

The findings by Wells Fargo are similar to those released recently by the Thomson Reuters Institute. Those found warn that law firms “*are facing economic struggles due to a drop in demand and rising costs.*”

Wells Fargo found that, among the firms surveyed, lawyer compensation costs were up almost 17 percent over the past year and general expenses had increased by over 14 percent.

REALLY?: Two of most eyebrow-raising things that court reporters have actually transcribed in a courtroom...

LAWYER: “*What gear were you in at the moment of the impact?*”

WITNESS: “*Gucci sweats and Reeboks.*”



And, not to be outdone...

LAWYER: “*What is your brother-in-law’s name?*”

WITNESS: “*Borofkin.*”

LAWYER: “*What’s his first name?*”

WITNESS: “*I can’t remember.*”

LAWYER: “*He’s been your brother-in-law for years, and you can’t remember his first name?*”

WITNESS: “*No. I tell you, I’m too excited. I can’t...(rising and pointing to his brother-in-law) Nathan, for heaven’s sake, tell them your first name!*”

INTERESTING TO NOTE: Is the word Christmas found in California statutes? In fact, yes. The word is used 28 times just in the context of Christmas trees and Christmas Day.

Two examples: The Government Code Section 51104(e) provides: “*‘Timber’ means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock.*”

The California Civil Code Section 1689.5(e) provides: “*‘Business Day’ means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.*”

By Craig B. Forry

Subtle Differences: Living Trusts v. Wills in California

ALL PERSONS WITH CHILDREN AND/OR REAL property should have an estate plan that includes a living trust so the inheritance of the estate does not have to be subject to a probate petition, with the related fees and costs, and delays.

The main difference between a will and a trust concerns the respective costs and time necessary to complete the distribution of the estate assets. A will is better than nothing, but a trust is better than a will.

The principal reason is because a will often has to be probated by a legal proceeding filed in Superior Court, and it can require many months to resolve, and the attorney handling the probate can charge a percentage of the estate as attorney fees.

By statute, to probate a will, the attorney fees are 4 percent of the first \$100,000 of the gross value of the probate estate, 3 percent of the next \$100,000, 2 percent of the next \$800,000, and 1 percent of the next \$9 million.

For a large estate, the attorney fees can be significant, and the time in Court may take over one year.

The probate proceeding is public and the terms of the will is available to review by anyone that requests a copy from the Court's file.

The purpose of "*estate administration*" is to determine that the decedent is in fact dead; establish the validity of the

will; identify the heirs and devisees of the decedent; settle any claims that creditors may have against the estate of the decedent; and distribute the property.

A living trust does not need to be probated in order for the trustee to take control of the trust estate, and handle the distributions to the beneficiaries.

However, if a beneficiary believes that the trustee is not acting correctly, a trust proceeding can be filed in the Superior Court, and there are other issues that can be presented to the Superior Court for a decision.

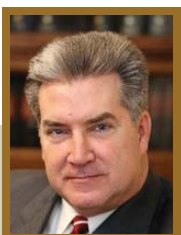
The cost of a trust is often a flat fee that is an amount that is significantly less than the cost to probate a will.

Any owner of real property or parent of children should have a trust that specifies the initial trustees, the successor trustees, the beneficiaries, and the items that comprise the trust estate.

The estate plan should also include a pour-over will that will enable any assets that are not deemed part of the trust estate to be probated into the trust estate.

A typical estate plan should include a financial power of attorney to enable the attorney-in-fact to control the financial affairs of an incapacitated person.

The plan should also include an advance health care directive to provide authority to the specified agent to make end of life decisions and regarding medical treatment if the person creating the directive is mentally incapacitated.



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

If the execution of a will is witnessed by at least two persons who are not beneficiaries, it is self-proving if it includes a sworn statement from the witnesses who watched the will-maker sign the will, and they attest to the validity of the will. It is not necessary to have the execution of a will confirmed by a notary public.

A trust requires a notary public to affirm the execution of the trust by the trustor who is also known as a settlor. The execution of the financial power of attorney and advance health care directive are also confirmed by a notary public.

In order to have a legally enforceable trust, it should be signed. Thereafter, assets need to be added to the trust estate.

Real property should be deeded into the trust by execution of a grant deed or quitclaim deed by the owner(s) to the owner(s) as trustees of their trust. I have handled cases where the actual trust document could not be located, but it was undisputed that the real property was a trust asset because a trust transfer deed had been recorded.


Bank accounts can be opened in the name of the owner as trustee of the trust. The shareholder of a corporation or member of an limited liability company can be the owner as trustee of the trust. Ownership of other

assets can be transferred into the trust estate by naming the owner, or a secondary beneficiary such as for life insurance, as a trustee of the trust.

Often, elderly owners of real property do not have a will or a trust, and their death can create significant legal issues that may require substantial time and attorney fees and costs to resolve.

A properly prepared trust, and the additional instruments for a comprehensive estate plan, can significantly reduce the cost and time to handle financial and health care concerns while the person is living, and to marshal, liquidate, and distribute the trust estate property after the death of the person.

Lessons to remember:

- For parents and/or owners of real property, a trust is essential to avoid the attorney's fees, costs and delay that result from a probate petition.
- A will is better than no inheritance document, but a trust is far superior to just a will.
- An estate plan should include a trust, pour-over will, power of attorney, advance health care directive, and a HIPAA authorization regarding medical records. 



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Text Messaging for Lawyers:

Building Stronger Client Relationships



IN TODAY'S WORLD OF INSTANT GRATIFICATION and text savviness, lawyers should consider changing the way they communicate with clients.

Some people detest answering calls, and with the rise of 'robocalls,' this aversion is only getting worse with all generations.

Add in the fact that today's consumer expects a response within seconds, it is clear that text messaging is becoming the new way of communication for most businesses.

For lawyers that are accustomed to emailing their clients, this may come as a curveball. Especially, considering that the legal industry has an average open rate of 18.30 percent for emails. Phone calls and emails are no longer the preferred method of communication, which is why you should be texting your clients.

Benefits of Texting

Marketers have been studying the effectiveness of text messaging and spreading the news of its benefits so much that 62 percent of business marketers plan to use

automated text messaging in the next year. What is it that has these marketing experts so convinced?

- **Change of Preference:** The vast majority of consumers prefer to communicate via text instead of calls or email. If a business is trying to send a message to prospects, it's important to know it's actually going to be seen.
- **Faster Delivery:** When time is of the essence, delivering a message via text is the fastest way to ensure your recipient sees your communication. Email open rates are at an all-time low, so those messages may go days without being seen, if they're seen at all.
- **Faster Response:** With faster delivery comes faster response times. Studies have shown text response rates are eight times faster than that of email.

Business Text Messaging

Business owners have already started incorporating text messaging in both their marketing and client retention strategies.

A law practice management software developer, Florida-based **PracticePanther** also produces award-winning editorial content for the National Law Review and several other national legal publications. The firm can be reached at help@practicepanther.com.

Studies have shown that the new generations will ignore calls, even from known contacts, and typically only use email to reset passwords and register for services.

As a workaround, businesses are enlisting the help of text messaging services to reach out to potential customers.

Instead of only investing in generating prospects, more and more businesses are using technology to help retain customers by enabling text help and communication. This feature is often embedded on the business's website and allows the customer to text a business directly from their phone for quick, personalized help.

Text messaging has increasingly grown in popularity across several industries. Studies show that businesses that respond to a customer's inquiry within five minutes increase their chances of converting that prospect by nine times.

In addition, studies show that the majority of consumers will go to the business that responds first, regardless of affiliation, pricing, or worthiness.

With statistics like this, industries across the spectrum are seeing the need for lightning-fast responses which can only be achieved through text messaging. The legal industry is no exception.

Text Messaging for Lawyers

The legal industry is not one that has historically been quick to respond to change, so it's no wonder that some lawyers are hesitant to adopt text messaging in their communication process.

Common objections to this method of communication seem to be propriety and confidentiality, while others are admittedly stuck in their old ways.

While the third issue is difficult at best to overcome, there are clear solutions and arguments for the first two which are detailed below.

Is It Appropriate to Text Clients?

This question comes up often when lawyers are trying to decide if text messaging is a professional mode of communication.

However, instead of viewing it from a proprietary standpoint, a lawyer should be asking the legal duty they have to communicate to their client efficiently.

As younger generations are coming of age and becoming clients, it's important to adapt to their preferred mode of communication.

If a client only has a cell phone and no easy access to email, the lawyer should accommodate the client and reach out to them in the best way possible. For most,

that means adopting text messaging as a primary mode of communication.

Are Text Messages Confidential?

Text messages may not be confidential in nature, creating challenges for texting clients.

Instead of avoiding text messaging due to this potential issue, lawyers should ask their clients to use screen locks and other security features on their phones. In most cases, clients are just as dedicated to protecting their privacy as their lawyer.

While expectations should be discussed in advance, it's easy for conversations to slip into gray areas. If a conversation may be veering into a confidentiality issue, the lawyer may suggest switching to a phone or in-person conversation.

Best Practices for Text Messaging Clients

As lawyers make the transition to using text messages more often, the standards for best practices will grow.

Thus far, the top tips for texting clients include:

- Adopting a legal practice management software that provides users with a business number to text clients within the platform and safely stores all correspondences with each contact.
- Never negotiating the terms of attorney-client relationships or anything that feels like a grey area. Remember: business text messages are supposed to be quick and informal.
- Discussing expectations and appropriate topics for texting. Make sure clients understand some topics are off-limits for text messaging and should be saved for in-person meetings.




Studies show that the majority of consumers will go to the business that responds first."

Keeping with the Times

While many lawyers may remember calling their client's on-wall-mounted phones and landlines, times have quickly changed.

The legal industry has to get on board if it's going to serve clients effectively and retain clients.

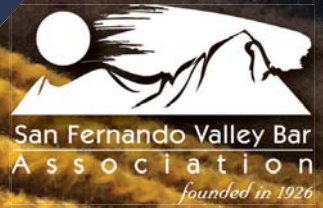
Despite the concerns, the benefits of text messaging outweigh the cons, and law firms will likely see an increase in client retention and improved communication once they adopt text messaging.

With a minimal upfront effort, lawyers can start texting their clients while maintaining confidentiality and professionalism, allowing clients to receive the best, and most convenient, representation possible. 

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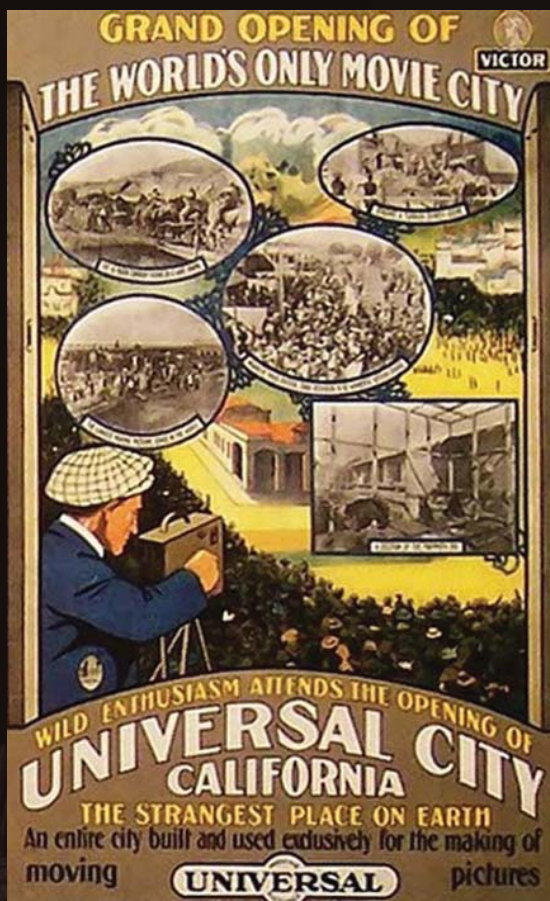
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Valley Retro



In 1915, German American immigrant Carl Laemmle bought the Taylor Ranch in the San Fernando Valley and founded Universal City as a gigantic motion picture studio with a zoo, as well as its own police and mayor. It was, in its day, the largest film studio in the world,

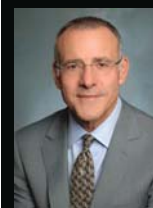
Laemmle sold his sprawling entertainment empire in 1936. As war clouds gathered over Europe, he helped bring more than 200 German-Jewish refugees to Los Angeles before his death in 1939 at age 72.

In July 1964, the Universal Studios Hollywood theme park opened, and the next few decades saw the construction of hotels, restaurants, an amphitheater, and the popular Universal CityWalk attraction, which, in 2021, had more than 5.5 million visitors—a staggering 324 percent increase over the previous year.



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A Look Back... A Look Forward

THE ELECTION RESULTS ARE in, and the Santa Clarita Valley Bar Association’s Executive Committee welcomes three new members—Jenna Edzant of Greene, Broillet, and Wheeler; Beau Goodrick, of Owen, Patterson and Owen; and Katie Simers of the Odom Law Group.

The trio will be sworn in during the Bar’s Executive Board Installation Dinner, Wednesday, December 7, 2022 at 6:00 p.m. at The Oaks Club in Santa Clarita. Presiding Judge of the Los Angeles County Superior Court, Eric C. Taylor, will be a special guest at the event.

In addition to welcoming our incoming board, we will be celebrating outgoing Board Members Cody Patterson, Christine Reynolds, Taylor Williams-Moniz, and Barry Edzant, and the work they did to make this a successful and busy year for the Association.

The Bar held its 9th Annual Speech Competition in April.

The three student finalists gave speeches about voting safeguards and accessibility to an audience of attorneys and judges. All three finalists were amazing speakers and earned cash prizes.

In July SCV Bar members attended a Dodger game vs. the Chicago Cubs and watched pitcher Clayton Kershaw notch a win. Given the Dodgers are undefeated when the SCV Bar is in attendance, we are hopeful the Dodgers will sign us to a post-season contract for 2023.

In September, Bar President and volunteer docent, Jeff Armendariz,

www.sfvba.org

along with several U.S. Navy veterans, gave our members a tour of the *U.S.S. Iowa*, an 80-year old battleship berthed at the Port of Los Angeles that saw action in both World War II and the Korean War.



We are happy to be back at The Oaks Club after a successful inaugural golf tournament this past spring.”

We are happy to be back at The Oaks Club after a successful inaugural golf tournament this past spring and have secured April 3, 2023 as the date for our Second Annual Golf Tournament at the Club.

COREY CARTER
Secretary, SCVBA



corey@themainstreetattorney.com

Please sign up on our website, or reach out to our director, Sarah Hunt at info@scvbar.org, if you are interested in being a Tournament sponsor. The Bar has also secured the WISH Education Foundation as its charity partner for the event.

The WISH Education Foundation is a Santa Clarita 501(c)3 non-profit corporation that organizes various programs to support local schools and their approximately 21,000 students.

Finally, our Annual Toy Drive will be taking place as well.

Please consider supporting the Drive by bringing an unwrapped toy—monetary donations accepted as well—to our Installation Dinner, or dropping your gift off at one of the drop boxes around town. Locations of drop boxes can be found on the SCVBA website and your help to support our local community for the holidays is greatly appreciated.

We wish everyone a prosperous end of year and a wonderful new year! 🏠


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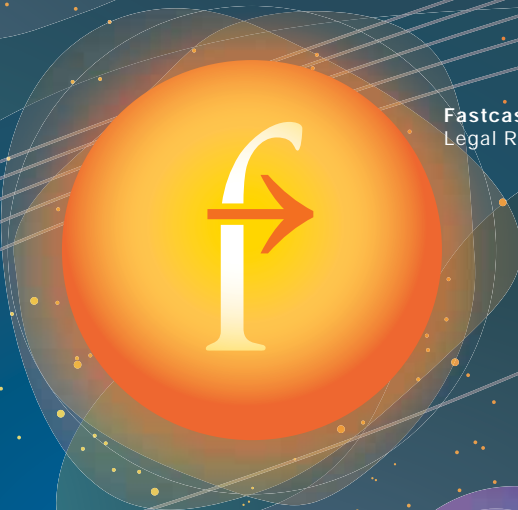
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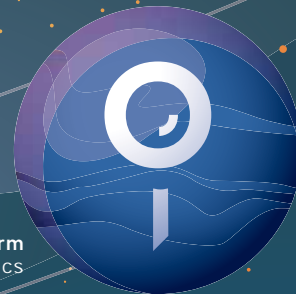
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