Judge Michael J. Raphael (right), Michael M. Farhang (center), and Christopher A. Nowlin (left) contend that properly focused discovery requests benefit clients and courts.

Just Discovery

Page 14
Chapman Continues its Roll-Out of New Practice-Ready Courses & Skills Labs

Expanded Roster of Courses Provide Essential Practical Skills

Chapman University Fowler School of Law continues to expand its practice-based curricular offerings, providing mandatory and optional courses that allow our students to meet and exceed new ABA minimum graduation requirements for practice-ready training. The school recently added 3 new mandatory practice-oriented courses and 11 new companion skills labs, skills-focused courses, and/or skills components to existing courses, augmenting its already broad experiential curriculum.

Existing Practice-Ready Courses
- Advanced Legal Research
- Arbitration Practice
- California Motion Drafting
- Client Interviewing and Counseling
- Constitutional Jurisprudence Clinic
- Commercial Leasing
- Elder Law Clinic
- Entertainment Law Clinic
- Externships
- Family Protection Clinic
- Juvenile Hall Conflict Resolution Clinic
- Legal Analysis Workshop
- Legal Drafting
- Legal Research & Writing (first year)
- Legal Writing Skills
- Litigating California Regulations
- Mediation Clinic
- Mediation Practice
- Media Industry Transactions
- Negotiations
- Pre-trial Civil Practice
- Real Estate Transactions
- Skills Competitions
- Tax Administration Clinic
- Trial Practice
- United States Tax Court Clinic

NEW REQUIRED SKILLS-BASED COURSES

Civil Procedure Skills Lab (new first year requirement). Course participants will complete practice-focused projects such as fact investigation and litigation strategy development, pre-trial motion practice, discovery development, and meet and confer exercises.

Legal Research Training Lab (new first year requirement). Assignments are designed to approximate the world of working lawyers as closely as possible. Students take on the role of prosecutors and defense counsel, civil attorneys, in-house counsel, negotiators, and so on.

Practice Foundation: Transactions (new upper level requirement). Provides extensive training in transactional lawyering, including drafting and exercises built around simulated transactions that lawyers handle in practice.

RECENTLY ADDED SKILLS-BASED ELECTIVE COURSES
- Administrative Law Skills Component
- Employment Law Skills Lab
- Family Law Skills Component
- Immigration Law Skills Lab
- Land Use Skills Lab
- Mergers and Acquisitions Practice
- Practice Foundation: Criminal Law
- Restorative Justice Clinic
- Securities Regulations Skills Lab
- Trademark Practice
- Wills & Trusts Skills Lab

Hire your next PRACTICE-READY associate from Chapman University Fowler School of Law.
For information about our On-Campus Interview or Resume Collection programs, contact our Career Services Office at 714-628-2648 or lawcareerservices@chapman.edu.
OUR EXCEPTIONAL COMMERCIAL ARBITRATORS
MANAGE THE PROCESS FOR EFFICIENCY AND FAIRNESS.

These Southern California Commercial Arbitrators are members of the AAA® Large, Complex Case Panel and have been elected Fellows of the College of Commercial Arbitrators.

To learn more about how the AAA® can help you find the best arbitrator(s) for your client’s important case, call us at the number below or visit us at www adr.org.
FEATURES

14 Just Discovery
BY JUDGE MICHAEL J. RAPHAEL, MICHAEL M. FARHANG, AND CHRISTOPHER A. NOWLIN
It is to the benefit of all litigants that court dockets not be consumed with discovery motions that could have been avoided with constructive dialogue.

21 The Measure of Misconduct
BY HOLLY N. BOYER
Bias concealed during voir dire and extraneous influence are two categories of juror misconduct that may allow for a new trial.

Plus: Earn MCLE credit. MCLE Test No. 251 appears on page 23.

26 Plain Ambiguity
BY MARK J. PHILLIPS
As shown in Estate of Russell and Estate of Duke, fact patterns may so strain a rule of will construction that courts may choose to break with precedent.

32 Special Section
Semiannual Guide to Expert Witnesses

DEPARTMENTS

8 On Direct
Stephen W. Clark
INTERVIEW BY DEBORAH KELLY

10 Barristers Tips
How I volunteered at LACBA’s Domestic Violence Legal Services Project
BY JESSIE OWEN

11 Practice Tips
Provisions for the recoupment of pension plan overpayments
BY JENNIFER ANDERS-GABLE

60 Ethics Opinion No. 527
Legal advice and assistance to clients who propose to engage or are engaged in the cultivation, distribution, or consumption of marijuana

68 Closing Argument
Taking a transactional approach to mediation of litigated cases
BY MARK FINGERMAN AND RALPH WILLIAMS

66 Index to Advertisers

67 CLE Preview
This month we celebrate Veterans Day, a holiday dedicated to honoring those who serve or have served in the U.S. military. Originally known as Armistice Day, the holiday was declared by President Woodrow Wilson in 1919 to remember the end of World War I. The day was changed to Veterans Day in 1954. Many Americans, through their local communities, observe Veterans Day with parades and ceremonies honoring troops for their service to our country. At these functions many Americans take the opportunity to thank veterans for their service. Many businesses and restaurants give thanks to veterans in the form of free or discounted services and meals. LACBA, for its part, has an Armed Forces Committee (AFC) that serves as a means to provide pro bono legal services to veterans. Los Angeles lawyers can also thank our veterans by providing pro bono legal services via the LACBA Veterans Legal Services Project.

The project is a collaboration with the AFC that supports services offered at the Bob Hope Patriotic Hall in downtown Los Angeles. The project is staffed by a part-time director and part-time directing attorney, and it holds a clinic every third Wednesday of the month at the Patriotic Hall, where volunteer attorneys stand ready to assist veterans with such legal issues as traffic tickets, other infractions, failure-to-appear charges, and warrants.

The LACBA Veterans Project compiled statistics of the veterans they assist. Approximately 60 percent of our veterans report incomes below the poverty level, and approximately 40 percent are currently homeless. An additional 10 percent report being at risk of homelessness. The overwhelming majority of these veterans have received honorable discharges, and approximately 38 percent report service-related disabilities. Approximately 98 percent of these veterans served from the Vietnam era to after September 11.

One of the volunteers at the Veterans Project is Clark Brown, LACBA’s general counsel and chief administrative officer. Clark reports one Veterans Project success story about a veteran who “came to a clinic last fall with several outstanding tickets and fines exceeding $4,000. Unable to pay the fines, he lost his driver’s license and, later, his job. With the project’s help, several charges against him were dismissed, his fines were reduced to under $800, and his license was reinstated. But the story doesn’t end there. He had been embroiled in a lengthy legal battle over custody of his son, and a major hurdle was his lack of stable housing. Once cleared of his legal hurdles, he got back to work and back into an apartment of his own, which he now shares with his son. Clearing the way for veterans to work allows the men and women who served this country to regain their independence and move on with their lives.”

Los Angeles lawyers wishing to express thanks to our veterans and to provide pro bono legal services can visit the LACBA Veterans Project at LACBA’s website (http://www.lacba.org) and can join the team of attorneys who serve. A number of law firms and organizations deserve praise for providing aid at the Veterans Project clinics to provide pro bono services for veterans. Most notable among them are Activision Blizzard, Foley & Mansfield, Herbalife, Gibson Dunn, NBC Universal, Nixon Peabody, Orrick, Proskauer Rose, Sheppard Mullin, and Yahoo.

If you are not able to make the Veterans Project clinics, please see the Valor Guide, an index of other organizations assisting veterans. The guide was written by a past chair of the AFC and can also be found on LACBA’s website.

Donna Ford is a retired assistant U.S. attorney, now in private practice handling appeals and serving as a mediator and arbitrator.
I just got served with a complaint for malpractice... I can't believe it!!!

You know what you should do?... right???

I did everything RIGHT for this client...
I got them great results!!! THIS IS CRAZY!!!

No worries... just send it to your malpractice carrier... they will take care of it!

Hmmmmmmmm...

You don’t carry malpractice insurance?? NOW WHAT are you going to do??!

Being RIGHT doesn’t protect you...

CALL LMIC NOW!

Lawyers’ Mutual Insurance Company
The Premier Legal Malpractice Carrier

LMIC.COM or call (800) 252-2045
Stephen W. Clark  Vice-president, general counsel, and secretary to the board of trustees of the J. Paul Getty Trust

What is the perfect day? In California, they’re all perfect days.

As general counsel of the J. Paul Getty Trust, what are your three major job duties? Governance, dealing with 1,300 to 1,400 employees, and litigation.

What about the slip-and-falls on the Italian travertine paving stones? We have very few, which is a good development and reflects hard work from a lot of people because when we first opened, there were a lot.

What changed? Better safety practices and excellent volunteers who are very good about helping people.

The purpose in founding the Getty as a California charitable trust was for “the diffusion of artistic and general knowledge.” Is that goal being met? Absolutely. It’s remarkable that Mr. Getty built in the flexibility that has allowed the trust to flourish.

You worked at MoMA as deputy general counsel from 1994 to 2008. What is the biggest difference between the two museums? One obvious answer is the focus of the collection; it is the best museum of its kind in the world.

The Getty welcomes nearly 1.8 million visitors each year to its two locations. Is there a busier museum in the country? Not west of Washington, D.C. The Metropolitan has close to 6 million a year.

The Getty endowment is $6.7 billion per year, giving it a greater endowment than any other museum in the world. What museum is in second place? The Met. I think it has $2 billion.

Why did you choose this profession? Just lucky.

Are you an artist? No, I am the only one in my family with absolutely no capacity for art.

What is your favorite object at the Getty? Indian Holy Man, a drawing by Georges Seurat.

Besides the Getty, which is your favorite museum in the world? MoMA, probably. But I love the Norton Simon. That has been one of the great joys of coming to California. Also, the Hermitage—just jaw-dropping…it shows several centuries of autocracy followed by a revolution, when you just take everything from everybody—you can really build a collection that way.

What was your best job? The current one.

What was your worst job? Being in the glue room at the Jamestown Plywood Corporation.

How many art objects are on display at the Getty? Guessing…1,500, between the two museums.

How many art pieces does the Getty warehouse? 80,000.

What is deaccessioning? It is the formal process of taking something out of the collection for whatever reason. In American institutions, the only ethical purpose for selling an object is to raise money to acquire other art.

What characteristic did you or do you most admire in your mother? Perseverance.

If you were handed $10 million tomorrow, what would you do with it? Go have a really great dinner in Rome? It’s a funny question, I have what I need.

You wrote in “Nazi-Era Claims & Art Museums: The American Perspective” that whether an illegally taken object during the Nazi period was restituted is to be considered. How is that done? It’s a very difficult question of fact, often requiring considerable research, especially during the Nazi period.

A federal judge found that a museum in Madrid is the rightful owner of Rue Saint Honoré, the 1897 masterpiece by Camille Pissarro, which its original owner sold in 1939 for $360 and a visa to flee Nazi Germany. Right decision? It was a coercive taking and it wasn’t restituted, but it was absolutely the right decision because she was compensated. She made extensive claims against Germany after the war for lost property and she received the full value for what she said it was then worth.

Was the movie Woman in Gold, about Maria Altmann’s quest to have Gustav Klimt’s 1907 painting returned to her, an accurate depiction of the process? I haven’t seen the movie, but the result seemed appropriate; Austria had behaved very badly for a very long time.

What does the Getty do to make sure there are clear ownership titles? We expect a lot from our curators in terms of provenance—searching the ownership history of the object.

Is there a global trade in illicit antiquities? An illicit trade exists. Objects themselves are neither legal nor illegal. Collecting institutions must take care to avoid the illicit market.
Who is on your music playlist? Bob Dylan and the Rolling Stones.

What book is on your nightstand? *Catastrophe*, by Max Hastings.

Which magazine do you pick up at the doctor’s office? *Sports Illustrated*.

What do you do on a three-day weekend? Road biking, 50-60 miles. I bicycled across the country in my youth.

What is your favorite hobby? Reading.

What are your retirement plans? Sitting in front of a fire reading books and laying with grandchildren, maybe somewhere in the Hudson River Valley, with a small apple orchard and a few pigs to take care of.

Is there something you would like to accomplish for the Getty before you retire? As a lawyer, I am here to assist and guide those who run the programs.

What is your favorite sport as a participant? Skiing.

What is your favorite spectator sport? Baseball—watching the Yankees.

Which television shows do you record? *Wolf Hall*—it’s about Thomas Cromwell and his relationship to Henry VIII.

Do you have a Facebook page? No.

Are you on Twitter? No.

What is your favorite radio station? 89.3 KPCC.

Which person in history would you like to take out for a beer? Bill Clinton.

What is the best buy at the Getty Store? The books—they have a good selection at reasonable prices.

Reviews for the Getty restaurant rave about the braised short ribs. What do you order there? The braised short ribs are good, but I have to take a nap afterwards. I order the fish.

What are the three most deplorable conditions in the world? Illiteracy, poverty, and environmental degradation.

Who are your two favorite U.S. presidents? George Washington, who was instrumental in creating the nation, and Abraham Lincoln, who was instrumental in keeping the nation together.

What is the one word you would like on your tombstone? Gone.

---

**Firm for Sale**

**NORTHERN CALIFORNIA WORKERS’ COMPENSATION FIRM FOR SALE**

Established Bay Area defense firm, located near San Francisco and Oakland WC Appeals Boards, seeks to sell or merge. Annual revenues exceed $1 million, excellent clients with stable income. Capacity for continued revenue growth.

For more info, call (800) 837-5880 or e-mail: forsale@lawbizregistry.com.

---

**LAW FIRM FOR SALE**

Northern California Personal Injury Practice

Established firm with stable gross revenue of $1.75 million/year. Multiple offices in Northern California and Central Coast. Experienced staff and marketing make this a turn-key opportunity.

For more information, call or e-mail: 800.837.5880 forsale@lawbizregistry.com

---

**Intersession**

**AT LOYOLA LAW SCHOOL, LOS ANGELES**

Loyola Law School, Los Angeles is offering a compelling intersession schedule of classes on subjects geared to refine the skill sets of those pursuing a range of practice areas. Enrollment is open to attorneys, and 13-26 hours of MCLE credit are available. The courses will be held on Loyola Law School’s downtown Los Angeles campus over one week before the start of the spring 2016 semester.

**January 4-10, 2016**

**INSTRUCTORS** / Loyola Law School professors, visiting faculty members and pioneering practitioners

**MCLE** / 13 hours for a 1-unit course; 26 hours for a 2-unit course

**LOCATION** / Loyola Law School, 919 Albany St. (at Olympic), Los Angeles, CA 90016; a school shuttle runs between campus and the 7th St./Metro Center Station

**REGISTRATION DEADLINE** / Friday, December 4, 2015

**COURSES**

- A Practical Guide to Starting a Successful Immigration Law Practice
- Advanced Writing and Revision Seminar
- Case Planning and Contract Drafting
- Current Trends in White Collar Crime and Healthcare Enforcement
- Demystifying Standards of Review
- Deposition Workshop
- Financial Basics for Lawyers
- Fundamentals of the Bar Exam: Intensive Essay Writing
- Fundamentals of the Bar Exam: MBE Workshop
- International Courts and Tribunals
- Introduction to Corporate Finance & Debt Contracting
- Lawyers and Social Media: Do’s and Don’ts
- Opening and Closing Seminar
- Strategic Fact Development in Civil Litigation
- Topics in California Employment Law
- Wrongful Convictions: Causes and Remedies

To learn more or to register: [www.lals.edu/Intersession](http://www.lals.edu/Intersession)

**LOYOLA LAW SCHOOL | LOS ANGELES**

Loyola now offers an LLM in Cybersecurity & Data Privacy Law and five other Specializations: Civil Litigation & Advocacy, Criminal Justice, Entertainment Law, Intellectual Property and International Business. Learn more about spring enrollment at lals.edu/llm. Loyola also offers its well-established Tax LLM program (lals.edu/tax).
How I Volunteered at LACBA’s Domestic Violence Legal Services Project

PEOPLE OFTEN REFER TO MEMBERS of our generation as millennials, social media monsters, or harbingers of hipsterly doom; whatever the label, each evokes an entitled jerk. However, a recent Associated Press-GfK poll found that this generation embraces volunteering as its top civic priority. Listen to candidates yammer in another presidential debate? No, thank you. Use the Internet to stay informed? Sure, if upvoting corgi videos on Reddit counts. But ask for help to create a community garden? Suddenly, time seems bendable.

Yet members of our generation who also practice law may find it difficult to answer this calling. We are just beginning our careers and are full of ambition. We work hard, we work late, and we work weekends. How are we supposed to find time to volunteer? For attorneys at large firms, the answer may be simple because these firms often have generous pro bono programs. For attorneys in public service, however, the answer is more complex. With rare exception, public service employees are paid a pittance, and their employers’ tight budgets and conflict policies may not allow for pro bono work.

As a government attorney, I understand the tension between service and ambition, but no matter how intense my schedule becomes, I make time to help victims of domestic violence. Domestic violence pervades our communities and our courts. Growing up in a small town, I witnessed it damage families again and again. Then, working as a law clerk at a restraining order clinic, I listened to victims describe its toll. Now, as a deputy attorney general with the California Department of Justice, I see its damaging effects in criminal cases.

Witnessing such tragedy over and over made me feel helpless. So, I searched for a way to help victims of domestic violence and thought back to my law school work at Alameda County’s Family Violence Law Center. With a little help from Google, I found what I was looking for in the Los Angeles County Bar Association’s Domestic Violence Legal Services Project (DVP).

Over the past three decades, the DVP has helped more than 100,000 domestic violence victims. The DVP is one of LACBA’s legal services projects, funded by both its membership dues and its fundraising arm, LACBA Counsel for Justice. Last year alone, the DVP helped nearly 6,000 clients, and volunteers provided more than $2 million in pro bono services. The DVP depends on volunteer attorneys who help petitioners navigate the complicated process of filing for restraining orders. The DVP also extensively trains its volunteers.

Before I could become a DVP volunteer, I needed to find out how to do volunteer work as a government attorney. I talked with my supervisors and learned that the California Department of Justice encourages its attorneys to do pro bono work, providing guidelines for those interested in volunteering. These guidelines explain that deputies in our office may give pro bono services to programs that cater to indigent populations and are sponsored by certain organizations, including local bar associations. Additionally, our pro bono legal work should not 1) interfere with official duties, 2) create or appear to create a conflict of interest, 3) create an appearance of official sanction, and 4) include criminal matters or matters in which the state of California, a state agency, or a state official is a party.

I drafted a memo, approved by my supervisors, explaining that volunteering at the DVP does not conflict with the guidelines. First, addressing the requirement that pro bono work should not interfere with my official duties, I specified that the DVP only requires volunteers to make two three-hour commitments per month for seven months, Monday through Friday from 8:30 to 11:30 A.M. or 1 to 4 P.M., and

The courage the victims display reinforces why I volunteer for the DVP—to help victims find some measure of protection.

The DVP clinic is located in Room 235 at the Los Angeles Superior Court on north Hill Street, mere blocks from our office. Also, my supervisor agreed to let me make up my volunteer hours by working late. Second, as far as the requirement that working with DVP should not create or appear to create a conflict of interest, no representation is required, and petitioners file as pro per parties. Third, the volunteer work should not create an appearance of official sanction because DVP staff attorneys supervise the work, and my office is not mentioned. Last, DVP work does not involve criminal matters or matters in which the state of California is a party. Domestic violence restraining orders are civil matters litigated between private parties.

A year after volunteering, one victim’s story still resonates. Most petitioners are women, but some men also seek help from the DVP. One day, a man in his early twenties came to the clinic. His tattoos matched his shut-down body language—he appeared to have already lived a hard life and was unaccustomed to asking for help. As we discussed his case, I realized what could make such a strong man change.

He had a child with an abusive ex-girlfriend, who would infrequently and inconsistently appear in their child’s life. The petitioner became the primary caregiver for the child, who had developed a serious illness. As he took the child to doctor appointments, between the petitioner’s two jobs, the ex-girlfriend stalked him, not because she wanted to see their child, but because she wanted to threaten the petitioner.

Cases like his are heartbreakingly common, but the courage that the victims display reinforces why I volunteer for the DVP—to help victims find some measure of protection. To learn more about the DVP and LACBA Counsel for Justice, please visit http://www.lacba.org/counselforjustice.

Jessie Owen practices criminal law with the California Attorney General’s Office in Los Angeles.
Provisions for the Recoupment of Pension Plan Overpayments

**MANY PENSION PLANS** have been adversely affected by the economic downturn and therefore may be auditing their funds more frequently and closely. Routine audits, and other inquiries, may uncover errors, including potential overpayments of benefits to participants. An overpaid retiree likely had no reason to suspect an error had been made, but he or she must quickly restructure a fixed income budget to accommodate a reduced pension and determine how to repay excess funds, with interest.

Pension plans must operate in accordance with IRS regulations in order to maintain their tax-qualified status, which means that a plan must correct payment errors. Many pension plans initially place the correction burden on the retired participant; however, the balance of equities often weighs against a pension plan that is better situated to both prevent and absorb the cost of errors, and in favor of an overpaid, innocent recipient. Pension plans have discretion to cease recoupment from a retiree’s ongoing benefit and recover its error elsewhere. Plans may evaluate relevant facts and circumstances and cease recoupment efforts when there is an inequitable impact because a retiree is experiencing financial, health, or other difficulties.

Pension plans often cite their tax-qualified status as the reason why they must recoup from the recipient. Often, a plan asserts that it is required to recover overpaid funds and therefore a retiree’s pension must be stopped until the funds are recouped. In some cases, the plan claims it is obligated to demand a six-figure, plus interest, lump sum return of the overpayment.

The IRS recently revised its regulations under its Employee Plans Compliance Resolution System (EPCRS) to clarify its position in recoupment matters. IRS Revenue Procedure 2015-27 states that “depending on the facts and circumstances, correcting an Overpayment under EPCRS may not need to include requesting that an Overpayment be returned to the plan by plan participants and beneficiaries.”

Previous sections of the EPCRS were modified to clarify that there is flexibility in correcting overpayments. The IRS now explicitly states that “an employer or another person” can repay the plan, with appropriate interest, “in lieu of seeking recoupment from plan participants and beneficiaries.”

The IRS clarified collection procedures by authorizing methods of recoupment from sources other than the participant because they had “been informed that some plans have demanded recoupment of large amounts from plan participants and beneficiaries on account of plan administration errors made over lengthy periods of time, and that plan participants and beneficiaries, particularly those who are older individuals, may have financial difficulty meeting some corrective actions that had been sought by plan administrators, including the return of Overpayments with substantial accumulated interest.” This is helpful for both plans and participants as guidance and clear rules have been lacking, making it difficult for plans to know what they may do and leaving retirees unclear about their rights.

The recent IRS clarification may reduce the number of drastic pension reductions that many older Americans have experienced, especially in cases when an overpayment had been ongoing, creating a large overpaid balance that is a hardship to repay. However, the EPCRS is primarily guidance, and, arguably, while the previous EPCRS principles did not require repayment, they encouraged a plan to take “reasonable steps” to recoup from the recipient. Although the EPCRS provides principles to be considered when a plan seeks to make a correction, and is an important reference point, it is prudent to incorporate other laws when advising, defending, and appealing alleged overpayments.

**Controlling Law**

Overpaid participants may be asked to repay large sums of money with interest that they cannot afford or that may otherwise deplete a limited retirement savings, and when they are often unable to physically, or otherwise, return to work to make up the difference.

A retiree’s income security is jeopardized in pension recoupment cases. An overpaid participant may have some fact-specific options for responding to the alleged overpayment.

It must be determined whether the pension is a public or private plan. Public plans have specific rules and applicable laws, and do not have to comply with the federal Employee Retirement Income Security Act of 1974 (ERISA). For retirees in California’s public retirement systems, CalPERS and CalSTRS, there are limitations on how far back the plan can request repayment as well as limitations on the reduction amount to recoup from ongoing benefits. Private pension benefits generally fall under ERISA protections in which neither a statute of limitations nor a defined limit on the reduction of ongoing benefits exists. Thus, a participant can be asked to repay a benefit that had been overpaid for decades, and a monthly pension may completely stop until repayment is made.

Employer-earned private and public pension payments are distinct from Social Security benefits. Many retirees receive some type of benefit from the Social Security Administration in addition to an

Jennifer Anders-Gable is the supervising attorney of the Western States Pension Assistance Project, one of six regional pension counseling projects, assisting retirees and beneficiaries with retirement plan questions and issues. The project is a program of Legal Services of Northern California.
employer-sponsored pension. Social Security overpayments are addressed in accordance to applicable federal law, and overpaid recipients may pursue the administration’s internal appeals process.

ERISA requires private pension plans to operate in strict compliance with the written plan document.10 It is therefore imperative to request a copy of the pension plan document that was in effect during the participant’s last hour of service to determine the participant’s rights and obligations.11 The plan document may also provide specifics to determine whether an overpayment was made. The plan erred in the initial calculation, so the retiree should request a calculation to determine that the new amount is truly what he or she is entitled to under plan terms.

Plan documents are often silent with respect to collection of overpaid funds or use general language permitting the plan to recoup from a variety of sources, including participants. A written provision permitting recoupment may help the plan, but it is not the end of the road for a retiree who may seek an alternate repayment option or waiver of the overpayment. Even when plan language requires collection of overpayments, federal courts—particularly in the Ninth Circuit—have held that such language does not prohibit a plan from waiving overpayments. Absent a finding of fraud or wrongdoing, Ninth Circuit courts have found that recoupment is not justified, even when plan language permits or requires it.12

If the plan treated the overpayment notice as an adverse benefit determination, then the notice should provide the right to copies of all documents, records, and information relevant to the determination.13 This presents a variety of sources, including participants. A written provision permitting recoupment may help the plan, but it is not the end of the road for a retiree who may seek an alternate repayment option or waiver of the overpayment. Even when plan language requires collection of overpayments, federal courts—particularly in the Ninth Circuit—have held that such language does not prohibit a plan from waiving overpayments. Absent a finding of fraud or wrongdoing, Ninth Circuit courts have found that recoupment is not justified, even when plan language permits or requires it.12

If the plan treated the overpayment notice as an adverse benefit determination, then the notice should provide the right to copies of all documents, records, and information relevant to the determination.13 This presents an opportunity for effective advocacy. If the notice was not properly presented as an adverse benefit determination, triggering certain requirements that must be in writing,14 the participant or his or her representative may request a perfected notice that may provide additional time, if a deadline was imposed. However, if the overpayment notice was not prepared as an adverse benefit determination, and a deadline is not involved, the participant may take time to evaluate the situation and gather necessary documents to determine available options.

An overpayment letter may not comply with ERISA's regulations as an adverse benefit determination. To the extent that the notice states that there will be a reduction of benefits, there should be statements informing the participant that he or she is entitled to copies of all documents relevant to the decision, he or she has a right to review or appeal, and a right to bring an action under ERISA.15 When these rights are not provided, it is likely that not only did the plan administrator deprive the overpaid participant of ERISA protections but also failed to provide adequate information to understand the merit of the overpayment.16

Breach of Fiduciary Duties

An argument regarding the failure to provide a proper notice may be included with an assertion that the plan administrator breached his or her fiduciary duty. Under ERISA, plan administrators act as fiduciaries and are required to discharge their duties “with care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”17

Case law supports waiver of overpaid funds when a plan administrator breached his or her fiduciary duty. In Phillips v. Maritime, the court found that the plan administrator breached his fiduciary duty to four older women by overpaying benefits for seven years due to the plan’s incorrect calculations. The court held that the duty of plan administrators and trustees is that of a fiduciary and that the administrators must exercise the “position of trust so as, at the very minimum, not to harm the beneficiary as a result of his failure to exercise reasonable care.”18 The court noted that the “balance of equities weighs in favor of disallowing Defendants to recoup the past overpayments. The overpayments were the result of more than just a mistake, they were the result of the plan administrator’s breach of fiduciary duty owed to the Plaintiffs.”19 In Phillips, the recipients did not know they were overpaid and had planned their lives relying on amounts promised and paid by the plan. The court thus permitted correcting their ongoing payments but disallowed recoupment.20 In prohibiting recoupment, the court stated that it “would [not] be equitable for the Plaintiffs to bear the weight of an error that [the plan administrator] could have prevented by upholding her duty as plan administrator.”21

Similarly, in Adams v. The Brinks Company,22 the court did not require the participant to return excess payments made prior to discovery of the administrative error because he had no role in the benefit miscalculation, the fault lay with the plan entrusted with the task, and evidence showed “careless inattention to detail” in the plan’s administration.23 The court held that the fiduciary breached its duty by materially misleading participants and explained that a fiduciary’s inaccurate statements or omissions are a breach of fiduciary duty, despite whether they were negligent or intentional.24

Further, case law supports that recoupment is the same as restitution and therefore is not an appropriate remedy because restitution is inequitable when a plan administrator has
breach its fiduciary duty and when the plan is limited to equitable relief. ERISA limits the circumstances under which a fiduciary may file an action for restitution to recover overpayments to appropriate equitable relief.

The U.S. Supreme Court has interpreted the statute to authorize only "those categories of relief that were typically available in equity (such as injunction, mandamus, and restitution, but not compensatory damages)." Claims for money damages are not equitable relief because they are "the classic form of legal relief" and fall outside the relief typically available in equity. In Great-West Life Insurance and Annuity Company v. Knudson, the U.S. Supreme Court held that recoupment of erroneous benefits is not available under ERISA, at least not when the property at issue is not an identifiable res.

Overpaid retirees rely on the plan administrator's duty of loyalty and reasonable care to provide accurate payments. A plan administrator's error could have been prevented if he or she had fulfilled his or her fiduciary duty. Furthermore, when the benefit is not ongoing and there is no longer an identifiable res, ERISA may bar a plan administrator from recouping from the participant.

A plan is not without remedy for the plan administrator's breach. ERISA provides that "any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries will be personally liable to make good to such plan any losses to the plan resulting from each such breach....and will be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary." When recouping from the participant is a hardship or otherwise imprudent or impractical, the plan may recover from another appropriate party.

Recoupment Hardship
A request to modify or waive an overpayment recoupment demand is strongest when repayment is likely to cause a hardship to the overpaid retiree. Perhaps the reduced corrected benefit alone will be a hardship for someone who has budgeted his or her later years on a fixed income, which is later determined to be inaccurate. Pension plans have a duty to make the plan whole, but this does not require recovery from an innocent, unknowing retired participant.

ERISA fiduciary standards require that the fiduciary prudently weigh the plan's financial interest against individual circumstances, including financial hardship. A U.S. Department of Labor (DOL) advisory opinion authorizes a plan administrator to consider a participant's hardship when deciding how to recoup. A fiduciary may be limited in its duty to recover overpayments from a participant if "the facts and circumstances involved" present a hardship.

The DOL suggests that a plan administrator not recoup if it creates a hardship for the retiree or when the cost of collection efforts "may be such that it would be prudent, within the meaning of [ERISA] section 404(a)(1)(B), for the Fund not to seek recovery from the participant or beneficiary of an overpayment made to him." It may be imprudent for the plan to pursue a participant when he or she is unable to repay overpaid benefits. ERISA does not require plans to recover from participants, which further supports a plan's ability to waive recoupment efforts, particularly when repayment is a hardship.

Courts interpreting ERISA have shown concern with whether the recoupment will have an inequitable impact. When recoupment creates a hardship, the balance of the equities may prove it is inequitable to collect from the participant.

A plan's calculation error, whether administrative or otherwise, and failure to timely discover the error, coupled with reliance on a promised monthly benefit, may demand an exception to repayment suggestions found in the plan or elsewhere. In order to protect the income security of older vulnerable retirees and incentivize fiduciaries to do a better job administering their plans, more plans should heed recent IRS guidance and waive overpayments, particularly when the action is against an elderly individual who is unable to work and relies on his or her pension for life's necessities.

Overpayment notices may seem bleak; however, plans are often willing to accept repayment plans or consider hardship waivers. Some retirees will seek public benefits to replace suspended pensions or may face foreclosure when their monthly income is no longer sufficient to cover mortgage payments. Under these conditions timely communication and advocacy may help. While a plan is permitted to correct future payments, it sometimes may be imprudent to recoup from an unknowing overpaid retiree who was unable to prevent the error and is unable to adjust his or her circumstances to make the plan whole.

1 See Rev. Proc. 2015-27 §3. 2 Rev. Proc. 2013-12 §§6.06(3), (4). 3 Rev. Proc. 2015-27 §6.06(3). 4 Id. 5 Rev. Proc. 2013-12 §§6.06(3), (4). 6 29 U.S.C. §§1101 et seq. 7 See GOV'T CODE §20164(b)(1) (three-year period of limitation); GOV'T CODE §20164(d) (10-year period of limitation in cases of fraud). 8 EDUC. CODE §22008(a) (three-year period of limitations for erroneous payment); EDUC. CODE §24617 (five percent maximum reduction for overpayments when the recipient is not at fault, 15 percent if the recipient caused the overpayment). 9 Overpaid Social Security recipients who disagree with the overpayment finding can appeal by filing a request for reconsideration, Form SSA-561. Overpaid recipients who do not dispute the overpayment but were not “at fault” in causing the overpayment and cannot afford to pay it back at the requested rate, or at all, may file a Request for Waiver of Overpayment or Change In Repayment Rate, Form SSA-632. See 20 C.F.R. §§404.501 et seq. (for federal old-age and disability insurance overpayments) and §§416.501 et seq. (for Supplemental Security Income (SSI) overpayments).


14 Id.

15 Id.


20 Phillips, 194 F. Supp. 2d at 556. 21 Id. at 557.

22 Id. at 558-59. 23 Id. at 562. 24 Id. at 555. See Adams v. The Brinks Co., 372 F. Supp. 2d 854 (W.D. Va. 2005).


29 Mertens, 508 U.S. 248 at 56-57.

30 Id. at 255. 31 Great-West Life Ins. & Annuity Co. v. Knudson, 534 U.S. 204, 213-16 (2002); see also Honolulu Joint Apprenticeship & Training Comm. of United Ass’n Local 675 v. Foster, 332 F. 3d 1234, 1237-38 (9th Cir. 2003).

32 29 U.S.C. §1109(a); see also Phillips, 194 F. Supp. 2d at 557.

33 See Rev. Proc. 2015-27 and Dep’t of Lab. Advisory Ops. 77-07, 77-08, 77-33, 77-34. 34 Dept of Lab. Advisory Ops. 77-08.

35 Id.; see also Dep’t of Lab. Advisory Ops. 77-07, 77-33, 77-34.

36 See ‘Dep’t of Lab. Advisory Ops 77-07, 77-08, 77-33, 77-34.


Los Angeles Lawyer November 2015 13
DISCOVERY DISPUTES and motion practice consume a significant portion of the dockets of California Superior Court judges. Given that the Code of Civil Procedure broadly authorizes discovery of nonprivileged, relevant material that is admissible or “reasonably calculated to lead to the discovery of admissible evidence,” proper use of discovery is essential to successfully advance a party’s position in litigation. But indiscriminate use of discovery as a litigation tactic is neither effective nor desirable. Overbroad discovery requests are likely to meet judicial disapproval. On the other hand, California courts frown on overly nitpicky or nuisance objections that evade requests seeking clearly relevant information. Either over-aggressive tactic is likely to result in a dispute that may eventually require court resolution. For many civil judges, a third or more of the motions they hear pertain to discovery disputes, and plaintiffs’ and defense attorneys also spend a significant amount of their time and their clients’ resources litigating discovery disputes in order to further their positions.

These disputes are best avoided when possible, and inordinate expenditures of time and money on thorny discovery disputes need not be a part of every case. A large percentage of discovery motions can be avoided with proper initial structuring of requests and responses to make them more effective, combined with good-faith efforts at informal dispute resolution. Properly focused requests and responses can help both sides succeed in identifying and obtaining the discovery they need to best represent their clients. Meaningful and thoughtful use of the meet-and-confer process can help
resolve disputes without result to motion practice, which in turn will save attorney time and client money and avoid the threat of discovery sanctions, which discovery rules provide should be presumptively imposed against a party that unsuccessfully makes or opposes a motion to compel absent a finding of substantial justification or that sanctions would otherwise be unjust. Applying these principles can help attorneys gain important credibility with the courts before which they appear.

One application of these principles is to narrow the likelihood of disputes at the outset by negotiating with opposing counsel to clarify the scope of discovery. Determining legitimate discovery goals early and communicating with opposing counsel will increase the efficiency of the discovery process. Once a party’s discovery goals—i.e., what information will be needed to prove or defend the case—have been analyzed and identified, attorneys should open the lines of communication with opposing counsel. Communication by a requesting party about the purposes and scope of the requests can help the parties define their expectations and start working to resolve disputes before they arise.

One effective way to proceed is to negotiate a discovery protocol. Discovery is most likely to proceed smoothly, with the potential for disputes minimized, when the parties have reached agreement on scope through a framework or protocol. Before initiating discussions of a discovery framework with opposing counsel, attorneys can benefit from first addressing discovery goals with their clients and gaining familiarity with the universe of potentially relevant documents, the locations where those documents might be found, and the burden of searching them. Clients may be sensitive about producing particular documents for a host of reasons. Attorneys should understand these sensitivities before beginning discussions with opposing counsel so that they can negotiate a discovery framework that best addresses their clients’ concerns within the applicable rules.

There is no one-size-fits-all framework, but there are certain general characteristics common to effective discovery agreements. The first of these is a clear definition of the sources of documents to be searched. In the age of electronic discovery, clients (especially corporate clients) may maintain documents in multiple forms of electronic media, ranging from e-mails to local files to centralized databases. And many clients continue to maintain hard-copy records. An effective discovery protocol should address which of these sources will need to be searched in order to accomplish the reasonable goals underlying the discovery requests. With respect to electronically stored information (ESI), disputes frequently arise over the manner in which such data is produced. These disputes are avoidable and are far less likely to arise if the parties sit down with any available technical support at the outset of discovery and reach agreement on discovery specifications for ESI. Additionally, agreeing on a framework for which custodians’ documents will be searched and the date ranges for document productions can lessen the likelihood of future disputes arising.

Counsel should also work to reach agreement on the substantive scope of discovery. These disputes can present difficult dilemmas for attorneys, but one of the best ways to prevent them is by addressing them before discovery even begins. Take as an example a landlord-tenant dispute involving allegations that the landlord breached housing standards. The tenant may seek discovery related to all of the buildings owned by the landlord to attempt to establish a pattern of misconduct. The landlord may object and argue that the only relevant discovery is that concerning the apartment building at issue or, even more narrowly, the tenant’s particular unit. Because both parties understand the risk that their position may not ultimately be accepted by the court, a compromise agreement to meet somewhere in the middle, e.g., discovery relating only to a limited number of other properties that are similarly situated, might emerge as a more attractive solution after substantial communication and a good-faith effort to achieve a middle ground.

 Experienced counsel may realize that this result is in fact a fair resolution and what a court may end up requiring in any event. By seriously debating and assessing the merits of their positions at the outset of a case, and by working to find a middle ground if possible, parties have the potential to forestall disagreements from arising and bogging down the discovery process.

Stated simply, opening the lines of communication with opposing counsel early is a basic but critical first step toward improving effectiveness in the discovery process. Parties are less likely to enter into disputes when they are governed by a discovery framework in which they are mutually invested. Opposing counsel will be hard-pressed to argue that a position is unreasonable if the parties previously discussed and agreed to that very position.

**Exercise Restraint**

A second principle is to be reasonable and exercise restraint in drafting discovery requests and responses. Most attorneys have had the experience of being served with voluminous, extremely broad, catchall discovery requests or vague boilerplate objections unaaccompanied by meaningful responses. Another way to minimize the potential for unnecessary motion practice is to use discerning judgment in crafting discovery requests and responses so that they target only what is necessary.

In serving discovery requests, counsel should tailor the requests to the information that they genuinely need to prove or defend their client’s case. Overly broad requests, or requests that seek irrelevant information, serve only the purpose of drawing legitimate objections. Tailoring requests to more narrowly cover the critical subject matter will actually put more pressure on the responding party, which will have fewer grounds for objection and may risk looking unreasonable if the party resists a limited request. Moreover, clear and narrow requests better frame the issues for the court in the event of motion practice. As noted above, courts look unfavorably on excessively overbroad discovery requests.

Similarly, attorneys should be judicious in crafting responses and objections to discovery requests. Quibbling with semantics and advancing boilerplate objections without meaningful responses are not conducive to reaching compromise on discovery issues. Nuisance objections will undermine the appearance of a party’s good faith and will likely draw court disapproval when used to frustrate legitimate discovery requests. Making an unmeritorious objection or an evasive response to discovery are considered misuses of the discovery process that can subject parties and attorneys to monetary sanctions.

The responding party can enhance its credibility significantly if the court sees that it has carefully considered its responses and objections, tailored them to the particular requests, and made an effort to be forthcoming rather than evasive.

When facing requests that are overly broad but seek some relevant information, attorneys are advised to provide at least some meaningful responses in addition to articulating their legitimate objections. For example, if a defendant in a personal injury action seeks 10 years of medical records from a plaintiff, an overbreadth objection may be warranted, depending on the circumstances, but a constructive response could include the production of clearly relevant records from a narrower period of time.

A third principle is to always engage in a meaningful meet-and-confer process before bringing discovery disputes to the court. The Code of Civil Procedure requires that parties engage in a meet-and-confer process before the filing of most discovery motions in California civil courts. Motions to compel further responses to document requests, interrogatories, and requests for admissions all must be accompanied by a declaration stating facts showing a “reasonable and good faith attempt” to resolve informally the issues presented by the motion. The process can
be conducted in writing, over the phone, or in person. The purpose of the meet-and-confer requirement is to "encourage the parties to work out their differences informally so as to avoid the necessity for a formal order." The process is designed to narrow discovery disputes as much as possible before seeking judicial intervention. A failure to make reasonable, good-faith efforts at an informal resolution may be considered a misuse of the discovery process, and the court may impose monetary sanctions, including attorney's fees, on the offending party or attorney regardless of the outcome of the motion. While few published California authorities elaborate on the "reasonable and good faith" meet-and-confer requirement, those that do provide sound guidance for how to approach informal resolution. Attorneys should heed the lessons of these cases, which can help avoid costly motion practice and the imposition of sanctions by the court.

Simply going through the motions of the meet-and-confer process without a sincere effort to seek a real resolution of the disputed issues may not satisfy the statutory requirement. Townsend v. Superior Court, for example, illustrates this point. In that case, a plaintiff refused to answer questions during her deposition. This spurred a heated back-and-forth exchange between the attorneys during the deposition about the propriety of her refusal to answer. The plaintiff remained steadfast in her refusal, and the defendants moved to compel. In opposing the motion, the plaintiff argued that the defendants had failed to sufficiently meet and confer. The trial court rejected this argument, holding that the back-and-forth discussion at the deposition sufficed. The trial court granted the defendants' motion to compel.

The court of appeal reversed the trial court, holding that the limited back-and-forth at the deposition did not suffice for the meet-and-confer requirement. In an often-cited opinion, Justice Steven J. Stone explained that the purpose of the meet-and-confer requirement is to "lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes." The process requires that the parties present to each other the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions. The parties must make a serious effort at informal resolution, which requires that counsel attempt to talk over the matter, compare their views, consult, and deliberate. The defendants’ failure to adequately meet and confer led the court of appeal to reverse the trial court's order and direct the trial court to deny the motion to compel.

Further, a lack of diligence in initiating the meet-and-confer process may undermine an attorney's claim that the process was undertaken in good faith. In Obregon v. Superior Court, the court applied Townsend in the context of a failure to adequately meet and confer before moving to compel further responses to interrogatories. Notably, Obregon ties the reasonableness of a party’s meet-and-confer efforts to both the reasonableness of the underlying discovery requests and the speed with which the propounding party pursues informal resolution after receiving objections to its requests.

The plaintiff in Obregon served very broad interrogatories on the defendant. After the defendant responded, the plaintiff waited five weeks, or until just 13 days were left within the 45-day period to move to compel, before sending a letter to the defendant requesting further responses. The defendant responded with a letter that the plaintiff received only one day before the motion deadline and that reiterated the same objections. The plaintiff filed a motion to compel. The defendant opposed the motion on the basis that the plaintiff had failed to adequately meet and confer. The trial court agreed with the defendant, denying the plaintiff's motion and imposing sanctions on the plaintiff for failing to adequately meet and confer.

The court of appeal affirmed the trial court's ruling that the plaintiff failed to adequately meet and confer. The court reasoned that the "overbreadth of the requests" was relevant to the question of whether the parties met and conferred in good faith, observing that "[h]ere plaintiff propounded grossly overbroad interrogatories" and, after receiving defendant's objections, "simply sent a single brief letter, late in the relevant time period...mak[ing] no effort to explain why interrogatories of such breadth are proper in this case, an omission that reasonably suggests lack of a proper discovery objective." While every case presents its own facts, the lesson from Townsend and Obregon is...
tion about prior similar slip-and-fall incidents on the property. At an informal discovery conference, the parties agreed to narrow the request to a limited time period (two years) for a particular area of the theater (an area near the concession stand, where the plaintiff’s incident occurred). Yet, following the conference, the defendant disclosed only the dates of three prior similar incidents and refused to disclose facts about the incidents, though such facts had been requested. Upon granting the plaintiff’s motion to compel the information about the incidents, the court also imposed sanctions at the plaintiff’s request to compensate her for litigating the motion to compel. While the defendant’s initial objection was justified, the objection and failure to respond adequately to the narrowed request was without substantial justification.

How can attorneys avoid the prospect of a meet-and-confer process in which counsel are simply going through the motions rather than actively seeking to narrow or resolve disputes? First, a party that identifies a discovery issue should not delay in conferring with opposing counsel. As a formal matter, the meet-and-confer process does not automatically extend the 45-day period for bringing a motion to compel, so promptly starting the process can ensure that a meaningful process can occur before a motion is due. As a practical matter, a delay in initiating discovery discussions may show a lack of good faith. Importantly, a delay in a meaningful meet-and-confer attempt can have the effect of locking the parties into their positions, should they begin preparing for motion practice before efforts at informal resolution begin.

Second, the meet-and-confer process may stand a better chance of succeeding in some cases if the meeting takes place in person. While the rules permit the conference to be accomplished through letters, in practice these letters tend to contain more than a little posturing and advocacy, particularly given the probability that they will end up as exhibits to a motion to compel. Courts may appreciate seeing a meet-and-confer process that includes more than a simple exchange of letters. And, as in Townsend, a judge may conclude that such advocacy and argument do not suffice. When an in-person meeting takes place, it is best if an attorney with authority to resolve the discovery disputes can be in attendance.

Third, both sides should approach the meet-and-confer process prepared to compromise to whatever extent they can without truly compromising their legitimate discovery interests. A requesting party should consider reasonable restrictions on its requests, while a responding party should contemplate how it can expand on what it offers in response to requests. While resolution may not always be possible, willingness to compromise will show the court that the parties have made meaningful attempts to narrow the points of dispute. And, as in Obregon, unreasonable discovery requests (and responses for that matter) may discredit a party and suggest to the court that it did not take the meet-and-confer process seriously.

A fourth principle is to participate in an informal discovery conference or other informal avenues for resolving discovery disputes. Negotiations are not always successful, and even meet-and-confer efforts undertaken in good faith will not resolve every discovery dispute. In such cases, the parties may still have other options before resorting to motion practice. The Personal Injury Courts in the Los Angeles County Superior Court, for example, require that the parties engage in an Informal Discovery Conference (IDC) prior to filing motions to compel further responses to discovery requests. The purpose of the IDC is “to assist the parties to resolve and/or narrow the scope of discovery disputes.” Critically, judges in the Personal Injury Courts “have found that, in nearly every case, the parties amicably resolve disputes with the assistance of the Court.” This high rate of success is certainly attributable in part to the presence of the judge, which encourages the parties to earnestly come to the negotiating table, lessen their posturing, and be more reasonable in their positions. The IDCs also provide the parties with insight into which way a judge is leaning on a particular issue, which might indicate that motion practice is not a wise choice.

Importantly, the scheduling of an IDC does not extend the deadline for filing a motion to compel. Because of this, parties should try to schedule an IDC as soon as a dispute is identified, as the IDC “may avoid the necessity of a motion or reduce its scope.”

In most cases, both parties would be best served by entering into a stipulated extension of the 45-day motion to compel deadline. This will allow them to enter the required IDC without having invested too much time in preparing their motions, which could further entrench them in their positions.

Opportunities to receive informal judicial assistance in resolving discovery disputes are not limited to the Personal Injury Courts. Many Los Angeles County Superior Court judges make themselves available, either through telephonic or in-person conferences, to address and attempt to resolve discovery disputes so to avoid unnecessary motion practice. These informal conferences provide the same benefits as the IDCs in the Personal Injury Courts. They are an effective way of bringing attorneys to the negotiating table and persuading them to moderate their positions. Attorneys can take a number of steps to determine if a particular civil judge allows for these informal discovery conferences. These include 1) checking the court’s website and looking under “courtroom information” for the specific judge, 2) raising the matter with the judge at the case management conference, to hear directly from the judge what he or she believes should be done with a discovery dispute, and 3) contacting the judicial assistant (i.e., courtroom clerk) to inquire whether the judge would be amenable to an informal conference. Notably, some judges allow the parties to enter into a discovery resolution stipulation that governs discovery disputes. These stipulations are “intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.”

California civil judges also have the statutory authority to “appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.” Often, the active involvement of a court-appointed referee, who may have more time than a judge to focus on resolving discovery disputes, can help facilitate the meet-and-confer process and increase the likelihood of informal resolution. Because of this, civil litigants may want to explore the prospect of requesting a discovery referee at the outset of a case.

Motion practice on discovery issues should be a last resort for civil litigants in California state court. While some intractable issues cannot be resolved absent court intervention, a large portion of discovery disputes can be avoided or resolved informally if approached constructively. Both practitioners and their clients benefit from making meaningful efforts to informally resolve discovery disputes. Attorneys can be more effective at getting the discovery they need without resorting to costly and unnecessary motion practice. And making good-faith efforts to resolve disputes will protect counsel from the risk of sanctions for abuse of the discovery process. Moreover, an effective meet-and-confer process and judicious structuring of discovery requests and responses can help attorneys improve their credibility with the court. The court will appreciate not having its busy docket consumed with discovery motions that could have been avoided if the attorneys had engaged in a constructive dialogue. Given the serious demands and burdens placed on today’s state court system, a reduction in the number of discovery motions can free up time for courts to address other critical merits-related issues. This benefits all litigants.

ATTORNEYS: CAN WE HELP YOU?

We Stand  We Fight  We Win

Stewart Albertson  Glan Ducic-Montoya  Keith A. Davidson  Heather Côté

LOOKING TO REFER CASES?  LOOKING TO RETIRE?
We pay the highest referral fees per State Bar Rules  We buy Trust and Will practices State-wide

HANDLING CASES THROUGHOUT CALIFORNIA

San Francisco Office  Orange County Office
(415) 685-0909  (949) 608-0040
Silicon Valley Office  San Diego County Office
(650) 596-9999  (760) 804-2711
Los Angeles Office  Inland Empire Office
(213) 670-7940  (909) 466-1711

PRACTICE AREAS
- Trust Contests & Will Contests
- Trust, Estate & Probate Litigation
- Abused Trust & Abused Will Beneficiary Litigation
- Holding Trustees & Executors Accountable

www.aldavlaw.com

Albertson & Davidson LLP  Trust, Estate & Probate TRIAL LAWYERS
When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden.


See Obregon, 67 Cal. App. 4th at 431.

See Clement, 177 Cal. App. 4th at 1285-93; see also Standon Co., 225 Cal. App. 3d at 901.

CODE CIV. PROC. §§2016.040, 2031.310(b)(2) (motion to compel further responses to requests for document production), 2030.300(b) (motion to compel further responses to interrogatories), 2033.290(b) (motion to compel further responses to requests for admissions).


CODE CIV. PROC. §§2016.040, 2031.310(b)(2) (motion to compel further responses to requests for document production), 2030.300(b) (motion to compel further responses to interrogatories), 2033.290(b) (motion to compel further responses to requests for admissions).

CODE CIV. PROC. §§2016.040, 2031.310(b)(2) (motion to compel further responses to requests for document production), 2030.300(b) (motion to compel further responses to interrogatories), 2033.290(b) (motion to compel further responses to requests for admissions).


“JURORS, like all human beings, are imperfect.”1 While the jury system may be imperfect, courts have long protected a litigant’s constitutional right to a jury trial with 12 randomly selected impartial jurors “capable and willing to decide the case solely on the evidence before it.”2 Jurors are instructed only to consider the evidence presented to them at trial. However, in this digital age, a juror can conduct research with Google concerning an issue in the case or even view the scene of an incident through satellite images. When such juror bias or misconduct is revealed following a verdict, the fate of a new trial is contingent upon the posttrial briefing before the court. Rules of admissibility and standards warranting a new trial vary between California State court and federal court, making it imperative to know the rules of the game before stepping into a courtroom.

Under California law, a new trial may be granted if there was “irregularity in the proceedings of the... jury” or “misconduct of the jury.”3 “The right to an unbiased jury and unprejudiced jurors is an ‘inseparable and inalienable part’ of the right to jury trial. The guaranty is the right to twelve impartial jurors.”4 This guaranty is constitutional.5 “An impartial jury is one in which no member has been improperly influenced...and every member is ‘capable and willing to decide the case solely on the evidence before it.’”6

In ruling on a request for a new trial based on jury misconduct, the trial court must undertake a three-step inquiry. First, it must determine whether the affidavits supporting the motion are admissible. Second, if the evidence is admissible, the trial court must determine whether the facts establish misconduct. Lastly, assuming misconduct, the trial court must determine whether the misconduct was prejudicial.7

The party moving for new trial bears the burden of establishing juror misconduct and once established, a presumption of prejudice arises.8 The presumption

Holly N. Boyer is a certified appellate specialist and a partner with Esner, Chang & Boyer, a boutique appellate firm.
may be rebutted only “by an affirmative evidentiary showing that prejudice does not exist or by a reviewing court’s examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party resulting from the misconduct…Some of the factors to be considered when determining whether the presumption is rebutted are the strength of the evidence that misconduct occurred, the nature and seriousness of the misconduct, and the probability that actual prejudice may have ensued.”19 Misconduct “unless shown by the prevailing party to have been harmless will invalidate the verdict.”10

The procedure in federal court is generally the same. Following a jury trial, a court may grant a motion for a new trial “for any reason for which a new trial has heretofore been granted in an action at law in federal court.”11 Such a motion may be granted “if the verdict is contrary to the clear weight of the evidence, or is based upon evidence which is false, or to prevent, in the sound discretion of the trial court, a miscarriage of justice.”12 Juror misconduct based on a juror’s obtaining extraneous information is a ground for new trial.13 In considering a motion for new trial, a district court is first to determine whether an error occurred. If that is determined, then the district court is to decide whether the error caused prejudice to the party seeking a new trial.

Juror Affidavits

Although juror affidavits are the key source of evidence of juror misconduct and bias, the admissibility of these affidavits is not always straightforward. Admissibility often depends upon the type of misconduct involved—whether it concerns concealed or implied bias of a juror, or general juror misconduct, such as the introduction of extrinsic evidence during deliberations or third-party contact with jurors. Admissibility also hinges on the forum. While admissibility of statements concerning extraneous information infecting the jury is similar in state and federal court, evidence of concealed bias is not. (A recent U.S. Supreme Court decision, Warger v. Shauers, highlights the tougher standard applicable in federal court where concealed bias is at issue.14

In California, if the misconduct at issue is general juror misconduct tainting the verdict, only juror affidavits stating overt acts that are objectively ascertainable to be of such character as to probably influence the verdict improperly are admissible.15 Evidence Code Section 1150 provides: Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. However, no evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.16 Thus, while a juror may generally testify to any facts bearing on the existence of jury misconduct, a juror cannot testify about how this misconduct affected the minds of the jury.

If a juror concealed a bias during voir dire, in California this may be established through acts of misconduct throughout trial. A juror’s concealed bias may be proved by evidence of other misconduct, such as prejudging the case or claims of special personal knowledge or experience.17 Thus, a juror’s communication of matters outside the evidence to fellow jurors during deliberations may demonstrate 1) a concealed bias by that juror and 2) misconduct in that the jurors considered facts or matters outside the record during deliberations. “These same acts of misconduct may be cited both as evidence of a concealed bias and as an objective fact likely to have improperly influenced the jury’s verdict.”18

Statements of bias, or statements of a juror’s mental state on the issue of bias, are admissible because bias is misconduct.19 In Grobeson v. City of Los Angeles, Juror Kishiyama stated to another juror before deliberations: “I made up my mind already. I’m not going to listen to the rest of this stupid argument.”20 After concluding that Juror Kishiyama’s remark was a statement of bias constituting juror misconduct, the court considered whether the juror’s bias improperly influenced the verdict. On this point, the defendant argued that a mistrial was not warranted because there was no evidence that individual jurors were influenced by the remark. Rejecting this argument, the court clarified: “no one claims that Kishiyama’s statement had an influence on the verdict. The point is that Kishiyama’s prejudgment of the case was an improper influence on the verdict.”21 Thus, in considering whether a biased juror influenced the verdict the analysis is not limited to whether the statement of bias itself had an influence on the verdict. Rather, the analysis is whether the juror’s bias was an improper influence on the verdict.

Statements in juror affidavits tending to show that one or more of the jurors concealed bias or prejudice on voir dire are admissible.22 The rule against proof of a juror’s subjective mental processes is subject to the well-established exception for claims that a juror’s preexisting bias was concealed on voir dire.23 Thus, if the misconduct concerns concealed bias, juror affidavits may reflect the mental processes of the allegedly biased juror.

Additionally, hostility during deliberations may support a finding of actual bias.24 In Clemens v. Regents of University of California, the court considered evidence that a juror was hostile to the plaintiff’s claims throughout trial as relevant to determination of bias. In Bandana Trading Company, Inc. v. Quality Infusion Care, Inc., however, the court was careful to distinguish claims for juror bias and those of general juror misconduct and noted that when juror misconduct (not bias) was alleged, statements that a juror “discouraged other jurors from asking questions, intimidated other jurors by pushing them” and “rushed [jurors] into deciding on a verdict” was inadmissible evidence of mental processes and did not constitute misconduct.25

To establish juror bias, there is no obligation to prove that the statements made by a juror that indicated bias actually influenced the verdict.26 The California Supreme Court has made clear that if it appears substantially likely that a juror was actually biased, a new trial must be ordered, even if the court believes that the same verdict would have been reached by an unbiased jury. In In re Carpenter, the court explained that whether or not the bias of a juror was prejudicial concerns an analysis less tolerant than a harmless error analysis, because “for if it appears substantially likely that a juror is actually biased, we must set aside the verdict, no matter how convinced we might be that an unbiased jury would have reached the same verdict.…A biased adjudicator is one of the few ‘structural defects in the constitution of the trial mechanism, which defy analysis by “harmless-error” standards.”27

The federal counterpart to California’s Evidence Code Section 1150 is Rule 606(b) of the Federal Rules of Evidence. As the U.S. Supreme Court held in Tanner v. United States, “The near-universal and firmly established common law rule in the United States flatly prohibited the admission of juror testimony to impeach a verdict,” and this policy is embodied in Rule 606(b).28 And as the Ninth Circuit held in Hard v. Burlington N.R. Company, when reviewing evidence of juror statements, “the district court must examine this material to decide whether it falls within the categories of admissible juror testimony permitted by Rule 606(b). Rule 606(b) permits testimony only on the questions of ‘whether extraneous prejudicial information was improperly brought to the jury’s
1. In California, the party moving for new trial based on juror misconduct must demonstrate the existence of juror misconduct and its prejudicial impact on the verdict.
   True.  
   False.

2. A juror’s statement to other jurors of prejudgment of the case may constitute bias regardless of whether the other jurors were affected by the statement.
   True.  
   False.

3. In federal court, a juror declaration stating that another juror made comments during deliberations evidencing the juror’s concealed bias against a party is admissible.
   True.  
   False.

4. The federal standard for granting a new trial due to juror misconduct is “reasonable possibility” that the verdict was affected.
   True.  
   False.

5. The right to a new trial due to juror misconduct is constitutional.
   True.  
   False.

6. A juror declaration stating that the jury’s discussion of extraneous matters outside the evidence influenced his or her verdict and caused him or her to vote a certain way is admissible in California.
   True.  
   False.

7. It is not enough to demonstrate that a juror was biased against the losing party; a showing must also be made that the juror’s statements of bias actually influenced the jury's verdict.
   True.  
   False.

8. A juror declaration stating that another juror’s statement during the trial that his or her mind was already made up and there was no point in listening to the evidence is admissible.
   True.  
   False.

9. Any juror misconduct violates a party’s right to a jury trial and will therefore invalidate the verdict.
   True.  
   False.

10. Federal and California courts treat a juror’s use of social media during a trial similar to a juror’s use of a dictionary.
    True.  
    False.

11. A juror’s statement during deliberation that he or she will never find in favor of the corporate defendant because all corporations are corrupt and repeatedly lie is admissible to show either concealed bias or juror misconduct in the form of offering extraneous information into deliberations; the evidence cannot go to both bias and juror misconduct.
    True.  
    False.

12. Statements concerning another juror’s hostility during deliberations may be admissible to demonstrate concealed bias.
    True.  
    False.

13. When it appears likely that a juror was actually biased, the trial court can refuse to grant a new trial if the court believes that the same verdict would have been reached by an unbiased jury.
    True.  
    False.

14. When juror declarations reveal that the jury considered extrinsic evidence during deliberations, the court may consider the extent to which the jurors discussed the extrinsic evidence, the length of time it was available to the jury, and juror testimony as to whether the extrinsic evidence influenced how they ultimately cast their vote.
    True.  
    False.

15. A juror declaration stating that during deliberations the juror foreman told the other jurors that he refused to vote for the plaintiff because the plaintiff was poor and just looking for a deep pocket to sue is admissible in California.
    True.  
    False.

16. In California, when jurors have been exposed to extraneous information during deliberations inadvertently, a presumption of prejudice does not arise since the jurors did not intentionally consider extraneous information.
    True.  
    False.

17. A juror’s sharing of his or her life experiences during deliberations can never be a ground for juror misconduct warranting a new trial.
    True.  
    False.

18. In California, even when the prevailing party submits no counterdeclarations regarding the alleged juror misconduct, the presumption of prejudice may be rebutted by the court’s review of the entire record and finding that there is no reasonable probability of actual harm.
    True.  
    False.

19. In federal court, a juror’s statement that during deliberations another juror brought in a dictionary and read the definition of a word to the jury is inadmissible.
    True.  
    False.

20. A juror’s concealment of bias may be so extreme as to constitute a per se violation of a party’s right to jury.
    True.  
    False.

INSTRUCTIONS FOR OBTAINING MCLE CREDITS
1. Study the MCLE article in this issue.
2. Answer the test questions opposite by marking the appropriate boxes below. Each question has only one answer. Photocopies of this answer sheet may be submitted; however, this form should not be enlarged or reduced.
3. Mail the answer sheet and the $20 testing fee ($25 for non-LACBA members) to:
   Los Angeles Lawyer  
   MCLE Test  
   P.O. Box 55020  
   Los Angeles, CA 90055

Make checks payable to Los Angeles Lawyer.
4. Within six weeks, Los Angeles Lawyer will return your test with the correct answers, a rationale for the correct answers, and a certificate verifying the MCLE credit you earned through this self-assessment activity.
5. For future reference, please retain the MCLE test materials returned to you.

ANSWERS
Mark your answers to the test by checking the appropriate boxes below. Each question has only 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
attention’ and ‘whether any outside influence was improperly brought to bear on any juror...’” In Hard, the Ninth Circuit went on to opine: “Jurors may not testify as to how they or other jurors were affected by the extraneous prejudicial information or outside influence; they may only testify as to its existence.”

To that end, the court “may not consider jurors’ testimony addressing the jury’s deliberative process unless the testimony ‘bear[s] on extraneous influences on the deliberation.’” Generally speaking, information is deemed ‘extraordinary’ if it derives from a source ‘external’ to the jury. ‘External’ matters include publicity and information related specifically to the case the jurors are meant to decide, while ‘internal’ matters include the general body of experiences that jurors are understood to bring with them to the jury room.

Federal law for the most part therefore mirrors California with respect to admissibility of juror statements concerning extraneous information entering deliberations, but perhaps that is where the similarity ends. With respect to concealed bias of a juror, the U.S. Supreme Court has recently addressed a split among circuit courts as to whether bias concealed during voir dire but revealed during deliberations is admissible and grounds for a new trial, concluding that such statements of bias are inadmissible under Rule 606(b).

In Warger, the U.S. Supreme Court unanimously determined that jurors may not testify about what occurred during jury deliberations, even to expose dishonesty during jury selection or voir dire. Randy Shauers and Gregory Warger were involved in a traffic accident in South Dakota in which Shauers’s truck, which was pulling a camper trailer, clipped Warger’s motorcycle and resulted in serious injury to Warger. Warger filed suit against Shauers, asserting a claim of negligence. During jury selection, Warger’s counsel asked whether jurors would be unable to award damages for pain and suffering or whether there was any juror who thought, “I don’t think I could be a fair and impartial juror on this kind of case.” Regina Whipple, a prospective juror who later was selected as foreperson, answered no to these questions. After the jury returned a verdict in Shauers’s favor, Wargers moved for a new trial, submitting a juror’s affidavit revealing that Whipple had been dishonest in her answers during voir dire. The affidavit alleged that Whipple had argued against a verdict for Warger by saying that her own daughter had been at fault in a fatal automobile accident and that, if her daughter had been held liable, it would have “ruined her life.”

The district court denied the motion for a new trial, and the Eighth Circuit affirmed, finding that Rule 606(b) prohibited juror testimony about statements made during deliberations that were offered to show that a juror lied during voir dire. The Supreme Court affirmed. The Court began by stating that Rule 606(b) applies to juror testimony during a proceeding in which a party seeks to secure a new trial on the ground that a juror lied during voir dire, noting: “A postverdict motion for a new trial on the ground of voir dire dishonesty plainly entails ‘an inquiry into the validity of [the] verdict’: if a juror was dishonest during voir dire and an honest response would have provided a valid basis to challenge that juror for cause, the verdict must be invalidated.”

The Court continued, however, that pursuant to Rule 606(b), the statements made during deliberations that were offered to show that the foreperson lied during voir dire were not admissible. The Court rejected the line of cases from courts, including the Ninth Circuit, which have found that if a juror’s personal experiences are related to the litigation in question, such experiences may constitute “outside influence” if jurors lie about those biases during jury selection.

Pursuant to the court’s decision, when a party discovers that the jury’s verdict against him or her was tainted by the concealed bias of a juror as confirmed by statements made by the juror during deliberations, the litigant would be left powerless in seeking a new trial given the inadmissibility of such statements. One can imagine the potential biases, for instance racism, that could seep into deliberations, undetected during voir dire, but disclosed and prevalent during deliberations.

On this point, Justice Sonia Sotomayor appears to recognize that in certain such situations, there may be an out from Rule 606(b). In a discussion rejecting Warger’s argument that Rule 606(b) is unconstitutional in such circumstances, the Court noted that the right to an unimpaired jury is sufficiently protected by voir dire, the observations of court and counsel during trial, and the potential use of “nonjuror evidence” of misconduct. In a footnote, the Court stated: “There may be cases of juror bias so extreme that, almost by definition, the jury trial right has been abridged. If and when such a case arises, the Court can consider whether the usual safeguards are or are not sufficient to protect the integrity of the process. We need not consider the question, however, for those facts are not presented here.”

Google, the 13th Juror

In addition to bias, another area for a court to consider is prejudicial juror misconduct. This can include consideration of matters outside the record, obtaining information from outside sources, quotient or compromised verdicts, and consideration of the effect of attorney’s fees.

One of the most common forms of juror misconduct is the consideration of matters outside the record. As the U.S. Supreme Court held in Turner v. Louisiana, “The requirement that a jury’s verdict ‘must be based upon the evidence developed at the trial’ goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury.” It is without dispute that “[j]urors cannot, without violation of their oath, receive or communicate to fellow jurors information from sources outside the evidence in the case.” Similarly, it is improper for jurors to take into the jury room books or other material not admitted into evidence in order to advise themselves or their fellow jurors on any aspect of the case. In California, even if the exposure to extraneous information is inadvertent or “not blameworthy conduct,” it nevertheless “gives rise to a presumption of prejudice because it poses the risk that one or more jurors may be influenced by material that the (aggrieved party) has had no opportunity to confront, cross-examine or rebut.”

While a verdict must be based on the evidence and law presented during trial, courts often recognize that a juror’s view of the evidence is necessarily informed by life experience. Thus, establishing misconduct in this regard requires delicate balancing and an analysis of whether the extraneous information is merely reflective of life experience or introduction of outside matters.

An emerging area of juror misconduct concerns jurors improperly researching issues in the case on the Internet and communicating matters through social media such as Facebook and Twitter. Across the county and abroad, situations have arisen concerning improper use of social media during trial. But while the influence of the digital age on juror research and communications is axiomatic, case law on the subject is only just now evolving, with only sparse authority concerning Internet-tainted verdicts.

With respect to a juror’s Internet research, the analysis for federal and state is akin to a juror’s consideration of a dictionary or outside source of information. In United States v. Lawson, a juror used Wikipedia in a search for a definition of the term “sponsor,” which was one of the elements of the criminal charge that was at issue in the case and about which
the jury was to make a determination. The Fourth Circuit considered whether a presumption of prejudice applies when jurors consult dictionaries during deliberations. It concluded that it did when a juror uses a dictionary or similar resource to research the definition of a word or term that is material to an issue that is presented in the case. As to the juror research at issue, it explained that “the content of the extrinsic influence is of particularly great concern, because the Wikipedia definition of the term ‘sponsor’ addressed an element of the animal fighting offenses for which the defendants were on trial.”

Lawson concluded that the government had failed to rebut the presumption of prejudice, applying factors specific to considering dictionary definitions during deliberations.

In Marino v. Vasquez, the Ninth Circuit concluded that a juror’s use of a dictionary to define malice resulted in prejudice to the defendant. The court held there “was both a direct connection between the extrinsic material and the jury’s verdict, as evidenced by the holdout juror’s change of verdict, and misconduct relating to a material aspect of the case, the definition of the element of malice.”

Marino then explained that “[t]he concept of malice goes to the very heart of the deliberative process of a jury in a murder case.” Because the juror misconduct “related to issues ‘material to the guilt or innocence of the defendant,’” habeas relief was granted to the defendant for his convictions.

Marino identified five factors to consider in adjudicating challenges based on the introduction by a juror of extrinsic material: (1) whether the material was actually received, and if so how; (2) the length of time it was available to the jury; (3) the extent to which the juror discussed and considered it; (4) whether the material was introduced before a verdict was reached, and if so at what point in the deliberations; and (5) any other matters which may bear on the issue of the reasonable possibility of whether the extrinsic material affected the verdict.

As consideration of Internet-related searches or communications likewise involves the presence of extraneous information during deliberations, the Marino analysis should similarly guide the court’s determination of prejudice. “Where extraneous information is imparted, as when papers bearing on the facts get into the jury room without having been admitted as exhibits, or when a juror looks things up in a dictionary or directory, the burden is generally on the party opposing a new trial to demonstrate the absence of prejudice, and a new trial is ordinarily granted if there is a reasonable possibility that the material could have affected the verdict.”

In California an even broader presumption of prejudice arises when misconduct has been demonstrated. When misconduct of jurors is shown, it is presumed to be injurious to the complaining party unless the contrary is shown. The presumption of prejudice may be rebutted by either an affirmative evidentiary showing that prejudice does not exist or by a reviewing court’s examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party resulting from the misconduct.

While in most cases the jury system works precisely how it is designed, jurors are not perfect and on occasion juror misconduct can so affect a verdict as to deprive a party of a fair trial. In such situations, well-prepared juror affidavits and new trial briefing is critical for success both in California state court and federal court.
ENGLISH AND AMERICAN COURTS have long maintained a strict rule of determining the intent of a testator by examining only the words contained within the four corners of the will. This rule of construction, known as the plain meaning rule,1 required a court to classify each ambiguity in a will as either patent (for which certain extrinsic evidence was to be admitted for the purpose of clarification), or latent (for which no outside evidence was to be considered even when the examination of that evidence would cast light on an ambiguity and assist in its resolution). A testator’s mistakes, by contrast, were historically not corrected.

In 1968, the California Supreme Court in Estate of Russell2 sought to retire the plain meaning rule and allow the admission of extrinsic evidence in all cases of ambiguity. It was a sensible and welcome change, but the recent case of Estate of Duke3 makes it clear that courts continue to grapple with resolving those ambiguities, and the supreme court has now expanded the circumstances in which extrinsic evidence may be admitted in resolving disputes in decedents’ estates.

Wills are one of the oldest foundational blocks of law. The current rules for wills were laid down by King Henry VIII in 1540. The continuous difficulty in determining their meaning stems from the conflicting goals of the courts, one being to discern the intent of a deceased testator, and another to avoid an intestacy to the greatest extent possible but without creating by construction a will that a decedent did not write. For more than 450 years, fact patterns have frustrated any simple rule of construction.

In cases of patent ambiguity, in which the ambiguity appears on the face of the will, extrinsic evidence has always been admissible. A patent ambiguity could be an imperfectly described asset4 or a description of a beneficiary that applies to more than one person.5 In such cases, the Probate Code permits admission of extrinsic evidence to resolve the uncertainty.6 For example, if heavyweight boxing champion George Foreman wrote a will leaving the entirety of his estate to his son George, extrinsic evidence would be admissible to determine the correct beneficiary because each of his five sons is named George, and he has a daughter named Georgetta.7

Latent ambiguities, which are not evident on the face of the will, have confounded courts, and to preserve the intention of a decedent unable to speak for him- or herself, parties historically were not permitted to offer evidence of alternative meanings to commonly understood words or phrases. As the court held in Estate of Wilson, “The paramount rule in the construction of wills, to which all other rules must yield, is that a will is to be construed according to the intention of the testator as expressed therein, and this intention must be given effect as far as
Last Will and Testament
possible.” A consequence of this exclusionary rule is that evidence that could assist a court in interpreting the language of a decedent’s will is rendered unavailable.

**Estate of Russell**

In **Estate of Russell**, the California Supreme Court set about to simplify and make these evidentiary rules less arbitrary. Thelma Russell died testate in 1965, leaving a validly executed holographic will written on a small card. On the front of the card she wrote “I leave everything I own Real and Personal to Chester H. Quinn and Roxy Russell.” On the back of the card, she wrote “My $10,000 gold piece and diamonds I leave to Georgia Nan Russell.” Quinn was a close friend and companion of the decedent who for over 25 years had resided in one of the units on her rental property. Roxy Russell was the decedent’s Airedale dog.

The trial court found that it was the decedent’s intention that Quinn receive her entire estate, with the exception of the gold coin and diamonds bequeathed to Georgia, and the language in the will concerning the dog indicative only of the decedent’s wish that Chester care for the animal after her death. Georgia’s objection was that the gift of half of the residue of the estate to the decedent’s dog was clear and unambiguous, and that such a gift being void under the law prohibiting gifts to animals, half of the estate should pass to her under the laws of intestate succession. There being no ambiguity on the face of the document, she argued on appeal that the trial court erred in admitting the extrinsic evidence offered by Quinn that the language regarding Roxy was to be construed as a gift of the entirety to him with a precatory wish that he look after the decedent’s dog.

In reviewing the law of admission of extrinsic evidence, the California Supreme Court held that extrinsic evidence should be admitted in all cases of ambiguity, patent or latent, to determine whether an ambiguity exists. “[W]e think it is self-evident that in the interpretation of a will, a court cannot determine whether the terms of the will are clear and definite in the first place until it considers the circumstances under which the will was made so that the judge may be placed in the position of the testator whose language he is interpreting.” Once the concept of admission of extrinsic evidence based solely on the type of ambiguity was rejected, the court went on to rule that any extrinsic evidence, except evidence expressly excluded by statute, may be considered in ascertaining what the testator meant by the words in the will. If, in the light of such extrinsic evidence, the provisions of the will are reasonably susceptible of two or more meanings, an uncertainty arises on the face of the will, and extrinsic evidence will be considered to resolve the ambiguity. Having pronounced this sensible new rule of instruction, the Russell court viewed the will in light of the surrounding circumstances and concluded that the decedent did intend, in fact, to make an outright gift of half of the residue of her estate to her dog, and because gifts to dogs are invalid, half of the estate went by intestacy to Georgia.11

**Duke, Brock, and Barnes**

Even with clarification of construction set out by Russell, the recent case of **Estate of Duke** shows that courts continue to have trouble applying the evidentiary rules. In **Duke**, the decedent, Irving Duke, prepared a holographic will in October 1984. The relevant provisions of that will provided that his estate passed to his wife, Beatrice, and should they die “at the same moment,” the estate was equally divided between the City of Hope and the Jewish National Fund, charities important to Irving. Beatrice died first in July 2002. After her death, Irving told the representatives of the City of Hope that he was leaving his estate to both charities and made initial lifetime gifts against that ultimate distribution. When he died in 2007, his intestate heirs, two nephews, argued that since Irving and Beatrice did not die at the same moment, the estate passed to them through intestacy. In a motion for summary judgment, the charities argued that because a will does not dispose of all of the decedent’s property, the court ruled that the para-

mount purpose of the trustor was to care for his daughters, stating: Any other interpretation would not only defeat the trustor’s primary purpose of providing for his children, but would also impute caprice in the disposition of his property. In view of the situation of the parties, the obvious and only reasonable intention to be gathered from the plan of distribution when the instrument is taken by the four corners and read as a whole, is that a surviving sister should receive all of the property if a deceased child left no issues or husband surviving. Accordingly, a gift to [the surviving sister] in this contingency should be implied.13

The intestate heirs in Duke, by contrast, relied on the more factually similar Estate of Barnes. In Barnes, decedent Myrtle Barnes died in September 1962 with a will from 1949 leaving her estate to her husband, but in the event that they died simultaneously, to her nephew, Robert Henderson. The decedent’s husband, Carlton, did not survive her, but they did not die simultaneously, he having died more than five years before. Rejecting Henderson’s argument that extrinsic evidence of the decedent’s intent was admissible to resolve an ambiguity in the will, the court held that the simple failure to provide for a particular circumstance is not an ambiguity. The decision made clear that while wills should be interpreted to avoid intestacy, a court should not construct a will that a decedent did not write. The failure in a will to dispose of all property in every circumstance is not, the court reasoned, in itself an ambiguity. As the Barnes court put it, “To say that because a will does not dispose of all of the testator’s property it is ambiguous and must be construed so as to prevent intestacy, either total or partial, is to use a rule of construction as the reason for construction.”

In the court’s view, the decedent could easily have intended to provide only for the event of simultaneous death, with the expectation that if she survived she would rewrite the will. That having been the case, the decedent might have chosen not to do so.

The court of appeal in Duke found Barnes to be directly on point, and took pains to reconcile its decision with the California Supreme Court’s decision in Russell, that extrinsic evidence may always be introduced initially in order to show that, under the circumstances of a particular case, the seemingly clear language of a will actually embodies a latent ambiguity which is only discerned in the face of extrinsic evidence. The court of appeal was mindful that the terms of Irving’s will did not appear to comport with his otherwise express testamentary intent, finding
2016 CLE-in-a-Box
On-Demand or CD

25 Hour CLE Pack
(Includes Required Subjects)*

or

6 Hour CLE Bundle
(Required Subjects only)

THE 2016 CLE-IN-A-BOX IS APPROVED FOR USE THROUGH 2017
Compliance Group 1 (A-G) deadline is February 1, 2016

To order, go to LACBA.ORG/CLEBOX or call Member Services at 800.456.0416
Free ground shipping in the continental US only

25 Hour CLE PACK (includes Required Subjects)
On-Demand or CD: Participatory/Self-Study

$224 (LACBA Member Price) $274 (Non-Member Price)
$224 (LACBA Member Price) $274 (Non-Member Price)

6 Hour CLE Bundle (Required Subjects only)
On-Demand or CD: Participatory/Self-Study

$149 (LACBA Member Price) $199 (Non-Member Price)
$149 (LACBA Member Price) $199 (Non-Member Price)

The LACBA 2016 CLE-in-a-Box meets all of your mandatory CLE requirements (6 hours required subjects plus 19 hours general subjects = 25 hours and materials)

The LACBA 2016 CLE-Bundle meets all of your required subjects (6 hours required subjects and materials)

*Required Subjects include Legal Ethics 4 hours, Competence Issues (formerly prevention Detection, and Treatment of Substance Abuse or Mental Illness) 1 hour, and Recognition and Elimination of Bias in the Legal Profession and Society 1 hour
that he meant to dispose of his estate first to his wife, and then to the charities, and that it was difficult to imagine that he intended the charities to take only in the unlikely event that he and his wife died simultaneously. But the question was whether extrinsic evidence should be excluded when the language of a will is otherwise clear on its face. The Barnes court answered that question affirmatively, and the court of appeal in Duck found itself bound to do so also.

The appellate court read Barnes too strictly and failed to reflect on the fact that Barnes predates Russell, which was intended to change the rules of admission of extrinsic evidence to allow admission to resolve any type of ambiguity, even if the language of the will was not unclear on its face. Quoting from its previous holding in Russell, the supreme court in Duck wrote that in “order to determine initially whether the terms of any written instrument are clear, definite and free from ambiguity the court must examine the instrument in the light of the circumstances surrounding the execution so as to ascertain what the parties meant by the words used.”16

In Duck, the court reversed the court of appeal’s decision but not its rationale. Instead, Duck now stands for the proposition that extrinsic evidence is admissible not only to resolve construction problems in an ambiguous will (as set forth by Russell) but also to reform mistakes made by a testator in the writing of an otherwise unambiguous will. The Duck court stated: 

[W]e are persuaded that authorizing the reformation of wills under the circumstances and with the protections discussed above serves the paramount purpose of the law governing wills without compromising the policies underlying the statutory scheme and the common law rules. If a mistake in expression and the testator’s actual and specific intent at the time the will was drafted are established by clear and convincing evidence, no policy underlying the statute of wills supports a rule that would ignore the testator’s intent and unjustly enrich those who would inherit as a result of a mistake.17

In reaching this conclusion, the court recited those circumstances in which extrinsic evidence has historically been admitted in cases involving wills, as when wills have been lost or destroyed and their contents needed to be proven. The court then drew on what it perceived as an existing trend of liberalizing the strict statutes surrounding the execution and construction of a valid will, including Russell on the admission of extrinsic evidence in cases involving ambiguity, and codification of the substantial compliance rule of Probate Code Section 6110(c)(2), which permits the admission of wills that nearly, but not entirely, satisfy the requirements of a validly attested will. The court also drew both on the strength of the compelling evidence of unjust enrichment in Duck’s facts, while motivating, did not find inclusion in the new doctrine set forth in the court’s ruling:

We hold that an unambiguous will may be reformed to conform to the testator’s intent if clear and convincing evidence establishes that the will contains a mistake in the testator’s expression of intent at the time the will was drafted, and also establishes the testator’s actual specific intent at the time the will was drafted.18

Rather than expanding the role of extrinsic evidence in cases of mistakes in what appear to be unambiguous wills, the supreme court could just as easily have stayed within the reach of Russell by determining that language in a will that results in an intestacy is an ambiguity unless the will states otherwise.19 Not every individual wishes to avoid intestacy, but every person who writes a will does. These cases resulted from either inadequate
drafting or a fault in a testamentary plan. In either situation, the court could have found and resolved the ambiguity using the existing Russell test without creating an entirely new body of law centered on the reformation of wills that contain mistakes.

In cases of unintended intestacy, extrinsic evidence should be admitted to clarify the intent of the decedent. In most circumstances, that will result in named beneficiaries taking before intestate heirs not mentioned, a laudable result that is consistent with the goal of avoiding intestacy. If the evidence demonstrates that no intestacy was planned, that intent should be carried out. The number of cases with unintended intestacy is relatively small and could have been contained within the reach of Russell, while claims that a testator made a mistake in drafting, calling for a trial and the examination of extrinsic evidence, as now permitted by Duke, could turn out to be disturbingly large.

1 The plain meaning or no extrinsic evidence rule holds that extrinsic evidence may be admitted to resolve certain ambiguities, but that the plain meaning of the words of the will cannot be disturbed by evidence that another meaning was intended. “The only means for ascertaining the intent of the testator are the words uttered and acts done by him.” Sanderson v. Norcross, 136 N.E. 170, 172 (Mass. 1922) “The plain meaning or no extrinsic evidence rule has been criticized as fundamentally misdirected.” 9 JOHN H. WIGMORE, WIGMORE ON EVIDENCE §2462 (1995).

2 Estate of Russell, 69 Cal. 2d 200 (1968).


4 See, e.g., Estate of Sullivan, 86 Cal. App. 2d 890 (1948) (property described by street number of one house and by lot number, which included a second house); Estate of Brisacher, 27 Cal. App. 2d 327 (1938) (daughter was bequeathed all jewelry but a “diamond wedding ring” to son—two rings fit that description).

5 See, e.g., Estate of Nunes, 123 Cal. App. 2d 150 (1954) (Testator who left a gift to his nephew “Joe E.” had a nephew named Joseph who was sometimes called Joe E. and a second cousin named Joe E. but sometimes called Joseph.); Estate of Zilke, 115 Cal. App. 63 (1931) (The decedent’s will left his estate to “Offen’s Home of San Francisco,” but none of the several orphanages in San Francisco had that name.).

6 Until 1990, Probate Code §105 provided, “When there is an imperfect description, or no person or property exactly answers the description, mistakes and omissions must be corrected.” After revision, Probate Code §6111.5 states, “Extrinsic evidence is admissible to determine whether a document constitutes a will pursuant to Section 6110 or 6111, or to determine the meaning of a will or a portion of a will if the meaning is unclear.”


8 Estate of Wilson, 184 Cal. 63 (1920). See also Estate of Dominici, 157 Cal. 181 (1907) (The codicil left a portion of the estate to Marie, a niece with whom the decedent was not close, when it was believed that he meant to leave it to the niece named in the earlier will, whose name was Christiane. The ambiguity not appearing on the face of the codicil, Marie took, notwithstanding the evidence.). See also Estate of Sessions, 171 Cal. 346 (1915) (The residue of the estate was left to “William E. Jackson, and to his heirs and assigns forever.” The court ruled that the phrase “and to his heirs and assigns forever” had at law the purpose of defining an interest in fee, not of remainder, and refused to admit evidence that it was intended to pass the estate to “his heirs” should he predecease the testator, which he did.). Compare Estate of Taff, 63 Cal. App. 3d 319 (1976) (Extrinsic evidence was admitted to demonstrate a lawyer’s drafting error.).


10 Prior Probate Code §105 proscribed the admission of “oral declarations of a Testator as to his intentions.”

11 Georgia stated “Not even Airedale dogs” in her initial petition for determination of heirship alleging that dogs are not on the statutory list of those entitled to inherit by wills.

12 Brock v. Hall, 33 Cal. 2d 885 (1949).

13 Id. at 891.

14 Estate of Barnes, 33 Cal. 2d 580 (1965).

15 Id. at 582.


17 Duke, 332 P. 3d at 879.

18 Id. at 881.

19 There are circumstances in wills and trusts in which intestacy is intended. Most documents have a “no surviving descendants” paragraph, which states that if all of the named beneficiaries and their heirs predecease the testator or die at any time during the term of an inter vivos or testamentary trust, then the assets should pass to the testator’s legal heirs.
ACCIDENT ANALYSIS/RECONSTRUCTION

4X FORENSIC ENGINEERING LABORATORIES, INC.
5262 Oceanus Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Website: www.4xforensic.com.

Contact Phil Van Herle, 4X Forensic Engineering Laboratory. We provide expert witness and analytical and testing services in the following areas: fires and explosions; electrical and gas product defect investigations; thermal and fire modeling and laboratory testing; water loss: materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

GLOBAL SOLUTIONS
P.O. Box 5588, El Dorado Hills, CA 95762, (916) 825-5592, fax (503) 676-1513, e-mail: globalcto@att.net.

Contact Russell Darnell, PhD, BSE, MBA, CAI, President/CTO. California Coast University, BSE, MBA, PhD Engineering Management. Accident reconstruction, motorcycle safety, forensic engineering, vehicle fires—cause and origin, motorcycles and off-highway vehicle accidents, safety gear, products testing. Motorcycles, auto, atv, boats, racing, trailers/towing, heavy equipment, accident reconstruction, motorists, product liability, engineering, safety, racetrack design. Sworn deposition testimony 600+ times. Appearance as an expert witness in 200 jury trials. Qualified since 1974 in state, federal, and foreign courts.

WILLIAM KUNZMAN, PE
1111 Town and Country #34, Orange, CA 92868, (714) 973-8383, fax (714) 973-8821, e-mail: bill@traffic-engineer.com. Website: www.traffic-engineer.com.

Contact William Kunzman, PE. Traffic expert witness since 1979, both defense and plaintiff. Auto, pedestrian, bicycle, and motorcycle accidents. Largest plaintiff verdicts: 1) $12,200,000 in pedestrian accident case against Caltrans, 2) $10,300,000 in case against Los Angeles Unified School District. Largest settlement: $2,000,000 solo vehicle accident case against Caltrans. Best defense verdicts: 1) $0 while defending Caltrans and opposition sought $16,000,000, 2) $0 defending City of Long Beach and opposition sought $15,000,000. Before becoming expert witness, employed by Los Angeles County Road Department, Riverside County Road Department, City of Irvine, and Federal Highway Administration. Knowledge of governmental agency procedures, design, geometrics, signs, traffic controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA; graduate work—Yale University.

MOMENTUM ENGINEERING CORP
2862 Columbus Street, Torrance, CA 90503, (310) 619-8017, fax (310) 619-6194, e-mail: ecf@momentum-eng.com. Website: www.momentum-eng.com.

Contact Ed Fatzinger. Expert witness services, airbag control module, vehicle dynamics and testing, animation and graphics, forensic engineering, failure analysis, and motorcycle dynamics.

CARL SHERIFF, PE, FORENSIC ENGINEER

ACCOUNTING

ADVISORS/EXPERTS @ MCS ASSOCIATES
16881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, (949) 263-2900, e-mail: experts@mcsassociates.com. Website: www.mcsassociates.com.

Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card), banking losses/mortgages, fraud, product liability, engineering, safety, racetrack design.

With The TASA Group, you can zero in on the best expert for your case.

It takes an expert to find an expert. And no one has more experience in referring expert witnesses than The TASA Group. Since 1956, we have helped thousands of attorneys identify the best expert witnesses for their cases—always at no charge until an expert is designated or engaged. And we continue to lead the industry through innovative services like free, expert-led CLE webinars, Challenge History Reports, Professional Sanction Searches, Expert Witness Profiles, Cyber Security, and e-Discovery and Forensics solutions that help attorneys work more efficiently and effectively. When you want the shortest route to the highest quality expert for your case, think The TASA Group.

TECHNICAL ADVISORY SERVICE FOR ATTORNEYS
800-523-2319
experts@tasanet.com | TASA.net.com
Call in the EXPERTS.
Bringing quality experts into the 21st Century.

Pro/Consul, Inc.
Technical & Medical Experts

15,000 DISTINGUISHED EXPERTS IN MULTIPLE DISCIPLINES.

“Pro/Consul’s ability to locate appropriate expert witnesses is unsurpassed.”

1-(800) 392-1119

Listed and recommended by the A.M. Best Company

- Rigorous standards
- Tailored service
- Prompt turnaround
- Free initial consultations
- Free resume book
- Reasonable rates

LOCAL OFFICE
Pro/Consul Inc.
1945 Palo Verde Avenue, Suite 200
Long Beach, CA 90815-3443
(562) 799-0116 • Fax (562) 799-8821
Hours of Operation: 6 a.m. - 6 p.m.
eexperts@msn.com • ExpertInfo.com

ADR Division
1-877-ARBITER
Retired Judges • Attorneys
Medical Doctors • Technical Experts
GURSEY|SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, e-mail: swasserman@gursey.com. Website: www.gursey.com.
Contact Stephan Wasserman. Gursey|Schneider is an accounting firm specializing in forensic accounting, litigation support services, business valuation, and appraisal services for a variety of purposes, including marital dissolution, gift and estate planning, eminent domain, goodwill loss, business disputes, malpractice, tax matters, bankruptcy, damage and cost-profit assessments, insurance claims, and entertainment industry litigation. Gursey|Schneider has over 35 years of experience as expert witnesses in litigation support. See display ad on page 41.

HARGRAVE & HARGRAVE, AN ACCOUNTANCY CORPORATION
12121 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025, (310) 576-1090, fax (310) 576-1080, e-mail: terry@hargraveandhargrave.com. Website: www.hargraveandhargrave.com. Contact Terry M. Hargrave, CPA/ABV/CFF, CFE. Forensic accounting and business valuation services for family law and civil cases. Past chair of California Society of CPAs’ Family Law Section and business valuation instructor for California CPA Education Foundation. Services include business valuations, income available for support, tracing separate property, litigation consulting, real estate litigation, mediation, fraud investigations, damage calculation, and other forensic accounting work.

HIGGINS, MARCUS & LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, (213) 617-7775, fax (213) 617-8572, e-mail: info@hmlinc.com. Contact Mark C. Higgins, ASA. The firm has over 30 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 43.

KRYCLER, ERVIN, TAUBMAN, AND KAMINSKY

WARONZOF ASSOCIATES, INC.
400 Continental Boulevard, Sixth Floor, El Segundo, CA 90245, (310) 322-7744, fax (424) 285-5380. Website: www.waronzof.com. Contact Timothy R. Lowe, MAI, CRE. Waronzof provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, lease dispute, property value, enterprise value, partnership interest and closely held share value, fair compensation, lender liability, and reorganization plan feasibility. Professional staff of five with advanced degrees and training in real estate, finance, urban planning, and accounting. See display ad on page 40.

ARCHITECTURE
A & E FORENSICS
2121 Montiel Road, San Marcos, CA 92069, (877) 839-7302, fax (760) 480-7477, e-mail: steve@aeforensics.com. Website: www.aeforensics.com. Contact Steve Norris, AIA, PE, GE, HG, CEG, CASp, LEED. Architect, engineer, contractor—standard of care expert. Retained over 200 times, deposed over 100 times, and testified in trial over 20 times. Waterproofing, water intrusion, building envelope, zoning setbacks, concrete performance, path of travel, structural analysis, earthquake fire damage, and plan analysis. Landlords, retaining wall failure, settlement, flooding, grading, septic, expansive soils, mud flows, pavement distress.
ground water evaluation, and slope analysis. Cost esti- mates, construction management, delay analysis, and contracts. Serving all California, Hawaii, and Oklahoma. See display ad on page 43.

BANKING

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail experts@mcsassociates.com. Website: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationaly recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigations consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/com- mercial, construction, consumer/credit card, banking operations/administration, trusts and investments, eco- nomic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

BANKRUPTCY

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnotele@fulcrum.com. Website: www.fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated pro- fessionals, and industry specialists. Our analysis and research combined with unique presentation tech- niques has resulted in an unequaled record of suc- cessful court cases and client recoveries. Our expertise encompasses damages analysis, loss profit studies, business and intangible asset valuations, fraud investiga- tions, statistics, forensic economic analysis, royalty audits, strategic and market assessments, competitive surveys, analysis of computerized data, injury and employment damages, and a wide range of other financial advisory services. Degrees/licenses: CPAs, CFAs, ASAs, Ph.Ds, and MBAs in accounting, finance, economics, and related subjects. See display ad on back cover.

BANKRUPTCY/TAX

ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Website: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/com- mercial, construction, consumer/credit card, banking operations/administration, trusts and investments, eco- nomic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

BUSINESS

FORENSISGROUP
EXPERT WITNESS SERVICES SINCE 1991
301 North Lake Avenue, Suite 420, Pasadena, CA 91101, (818) 986-5070, fax (818) 986-5034, e-mail: sallen@forensisgroup.com. Website: www.forensisgroup.com. Contact Mercy Steenwyk, 10,000 cases ForensisGroup has provided experts, 8,000 clients have retained experts from us. We respond in one hour or less. ForensisGroup is an expert witness services and consulting company providing experts, expert witnesses, and consultants to law firms, insurance companies, and other public and private firms in thousands of disciplines: construction, engineering, business, accounting, intellectual prop- erty, computers, IT, real estate, insurance, product liability, premises liability, safety, and others, including experts in complex and hard-to-find disci- plines. Let us give you the technical advantage and competitive edge in your cases. Referrals, customized searches, and initial phone consultations are free. See display ad on page 39.

ROBERT C. ROSEN
Citigroup Center, 544 South Flower Street, 30th Floor, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Website: www/rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbi- tration, and investment fraud. NYSE, AMEX, FINRA, SEC, SEC disciplinary proceedings, bankruptcy, and regulatory proceedings. We work with a broad net- work of testifying experts, including prominent faculty and industry practitioners, in a distinctive collaboration. The experts with whom we work bring the specialized expertise required to meet the demands of each assignment. Our areas of specialization include intellec- tual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnotele@fulcrum.com. Website: www.fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated pro- fessionals, and industry specialists. Our analysis and research combined with unique presentation tech- niques has resulted in an unequaled record of suc- cessful court cases and client recoveries. Our expertise encompasses damages analysis, loss profit studies, business and intangible asset valuations, fraud investiga- tions, forensic accounting, business litigation, com- mercial damage and lost profits computations, busi- ness valuation and appraisal, transactional due diligence, family limited partnerships, business intropu- tion, and family law. We provide experienced expert testimony and tax controversy representation.

CMM, LLP
With office in Woodland Hills and El Segundo (818) 986-5070, fax (818) 986-5034, e-mail: salen@cmmcpas.com. Website: www.cmmcpas.com. Contact Stuart Allen. Specialties: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valua- tions, family law, bankruptcy, and reorganization. Degrees/licenses: CPAs, CFEs, MBAs. See display ad on page 39.

CORNERSTONE RESEARCH
INSTITUTE OF RISK & SAFETY ANALYSES
KENNETH A. SOLOMON, PH.D., P.E., POST PH.D.
CHIEF SCIENTIST
5324 Canoga Avenue, Woodland Hills, CA 91364, (818) 361-1133, fax (818) 348-4484, e-mail: kenneth solomon@mac.com. Website: www.iras.us. Special- ized staff, broad range of consulting and expert testi- mony, 44 years of courtroom experience for Dr. Solomon. Our total courtroom experience for company 75 person years. Accident reconstruction, biome- chanics, human factors, safety, accident prevention, adequacy of warnings, computer animation and simu- lations, 3D scanning, construction defect, criminal defense, criminal prosecution, premises, product integrity, product liability, product testing, warnings, and lost income calculations. Auto, bicycle, bus, chair, elevator, escalator, forkift, gate, ladder, machinery, motorcycle, press, recreational equipment, roller- coaster, slip/trip and fall, stairs, swimming pool, and truck. Litigation and claims, defense/plaintiff, educa- tional seminars, and mediation and arbitration services.

BOATING

CAPTAIN TOM CARNEY
980 Orma Drive, San Diego, CA 92106, (619) 417- 6766, fax (619) 417-6767, e-mail: captiantc@aol.com. Website: www.sandiegoyachtdelivery.com. Contact Tom Carney. Experienced consultant and expert witness in the marine industry representing plaintiff or defendant, testimony for recreational or commercial boats, powerboats, sailboats, damage analysis, claim analysis, collision causes, rules of the road, insurance investigation, fraud, proper seamanship, naviga- tion, marine propulsion, mechanical and electronic systems on vessels, proper boat handling, liability analysis and weather analysis. Degrees/license: BA, Captian, U.S. Merchant Marine, 5,000 tons—all oceans, any waters.

BUSINESS

FORENSISGROUP
EXPERT WITNESS SERVICES SINCE 1991
301 North Lake Avenue, Suite 420, Pasadena, CA 91101, (818) 986-5070, fax (818) 986-5034, e-mail: sallen@forensisgroup.com. Website: www.forensisgroup.com. Contact Mercy Steenwyk, 10,000 cases ForensisGroup has provided experts, 8,000 clients have retained experts from us. We respond in one hour or less. ForensisGroup is an expert witness services and consulting company providing experts, expert witnesses, and consultants to law firms, insurance companies, and other public and private firms in thousands of disciplines: construction, engineering, business, accounting, intellectual prop- erty, computers, IT, real estate, insurance, product liability, premises liability, safety, and others, including experts in complex and hard-to-find disci- plines. Let us give you the technical advantage and competitive edge in your cases. Referrals, customized searches, and initial phone consultations are free. See display ad on page 39.

ROBERT C. ROSEN
Citigroup Center, 544 South Flower Street, 30th Floor, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Website: www/rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbi- tration, and investment fraud. NYSE, AMEX, FINRA, SEC, SEC disciplinary proceedings, bankruptcy, and regulatory proceedings. We work with a broad net- work of testifying experts, including prominent faculty and industry practitioners, in a distinctive collaboration. The experts with whom we work bring the specialized expertise required to meet the demands of each assignment. Our areas of specialization include intellec- tual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.
This matter comes before the Court upon the Defendant’s Motion for an Evidentiary Hearing on Admission of Polygraph Evidence (Doc. 67). An evidentiary hearing was held on this matter on December 23, 2014. In the motion, Defendant sought a hearing on the admissibility of the polygraph evidence and a ruling on the admissibility of said evidence. Accordingly, the Court will construe Defendant’s Motion for an Evidentiary Hearing on Admission of Polygraph Evidence (Doc. 67) as a motion to determine the admissibility of the polygraph evidence under Federal Rule of Evidence 702. The Court, having considered the motion and being fully advised in the premises, will grant the Motion and permit the polygraph evidence to be admitted at trial.

1. Background

Defendant Angulo-Mosquera, a 53-year old deckhand and cook, was indicted on September 4, 2014 in the Middle District of Florida on charges related to the seizure of 1,700 kilograms of cocaine concealed on board a Ruleighter known as the “Hope II” in August 2014. Defendant Angulo-Mosquera is a Colombian national with no known criminal record in any country. He has never before been in the United States. Defendant Angulo-Mosquera denies any knowledge of the drugs found concealed on the Hope II and any involvement of any kind in the illegal drug trade.
economics, and related subjects. See display ad on back cover.

**GURSEY|SCHNEIDER LLP**
15460 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0860, fax (310) 557-3468, e-mail: Website: www.gursey.com. Contact: Stephen Wasserman. Gursey|Schneider is an accounting firm specializing in forensic accounting, litigation support services, business valuation services, and financial services. It has a variety of purposes, including marital dissolution, gift and estate planning, eminent domain, goodwill loss, business disputes, malpractice, tax matters, bankruptcy, damage and cost assessments, insurance claims, and entertainment industry litigation. Gursey|Schneider has over 35 years of experience as expert witnesses in litigation support. See display ad on page 41.

**HAYNIE & COMPANY, CPAs**
4910 Campus Drive, Newport Beach, CA 92660-2119, (949) 724-1880, fax (949) 724-1989, e-mail: sgabielson@hayniecpa.com. Website: www.hayniecpa.com. Contact Steven C. Gabielson. Consulting and expert witness testimony in a variety of practice areas: commercial disputes, expert economic analysis, business valuation, lost profits analysis, fraud/forensic investigations, taxation, personal injury, wrongful termination, and professional liability.

**HIGGINS, MARCUS & LOVETT, INC.**
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, (213) 617-7775, fax (213) 617-8372, e-mail: info@hmlinc.com. Contact Mark C. Higgins, ASA. The firm has over 35 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and marital dissolution. See display ad on page 43.

**RGL FORENSICS**
Los Angeles Office: 800 South Figueroa Street, Suite 980, Los Angeles, CA 90017, (213) 996-0900, Contact Alan Lucine, alucine@rgl.com. Rich Holstrom, rholstrom@rgl.com, Orange County Office: 625 City Drive South, Suite 200, Orange, CA 92868, (714) 740-2100. Contact Hank Kahrs, hkahrs@rgl.com, San Diego Office: 11440 V Bernardo Court Suite 300, San Diego, CA 92127, (858) 463-0377, Contact Rich Holstrom, rholstrom@rgl.com. RGL Forensics is an international firm of forensic financial experts exclusively dedicated to damage analysis, fraud investigation, and valuation. Serving the legal, insurance, and business communities for more than 30 years, the firm is unique in its ability to combine investigative accounting, business valuation, fraud, and forensic technology expertise. For attorneys, we discover and define financial value in transactions and civil and criminal disputes, and when necessary provide expert witness testimony in court and arbitration proceedings. For more information about RGL and its 24 offices worldwide, please visit www.rgl.com.

**SCHULZE HAYNES LOVEENGUTH & CO.**
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8290, fax (213) 627-8201, e-mail: kschulze@schulzehaynes.com. Website: www.schulzehaynes.com. Contact Karl J. Schulze, president. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, corporate recovery, financial analysis, and modeling. Member of major professional organizations, experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA, CVA, CFE, ABV, PhD-Economics. See display ad on page 49.

**THOMAS NECHES & COMPANY LLP**

Industries: banking, construction, entertainment, insurance, manufacturing, retail, securities, and wholesale.

CREDENTIALS: Certified public accountant/accustomed in business valuation, certified valuation analyst, certified fraud examiner and certified in financial economics. Education: BA (Mathematics) UC San Diego, MS (Operations Research) UCLA, Taxation, Loyola Law School. See display ad on page 53.

**WHITE, ZUCKERMAN, VARSHAVSKY, LUNA & HUNT**
15490 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91403, (818) 981-4226, fax (818) 981-4278, 4 Park Plaza, 2nd Floor, Irvine, CA 92614, (949) 219-8916, fax (949) 219-9005, e-mail: info@wzhw.com. Website: www.wzhw.com. Contact: Barbara Luna. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalty, expert opinion, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, and marital dissolution, and tax planning and preparation. Excellent communicators with extensive testifying and presentations experience. Specialties include accounting, breach of contract, breach of fiduciary duty, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property (including trademark, patent, and copyright infringement, and trade secrets), malpractice, marital dissolution, personal injury, product liability, real estate, securities, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 51.

**ZIVETZ, SCHWARTZ & SALTMAN, CPAS**

**CHEMISTRY**

**CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.**
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85718, (800) 635-1044, e-mail: chemaxx@chemaxx.com. Website: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical incidents and chemical-related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warnings, labels,MSDSs, disposal, safety, EPA, OSHA, DOT, propane, butane, portable coast-profits, wind, boat fuel, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants). DOT certified (hazardous materials shipment). Certified fire and explosion investigator, OSHA process hazard analysis team leader. PhD Physical chemistry. Extensive experience in metallurgy, corrosion, and failure analysis.

**FETZPAHS CONSULTING**
P.O. Box 942, Pinole, CA 94564, (510) 724-8629, fax: (510) 724-0856, e-mail: fetzpais@hotmail.com. Website: http://home.springmail.com/~fetzpaahus/fetzpahsconsultingLinkedin profile: https://www.linkedin.com/pub/john-fetzer/0/a08/b23. Contact John C. Fetzer, PhD. Expertise in chromatography, spectrometry, and hydrocarbon chemistry and analysis.
CIVIL LITIGATION

GURSEY|SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, e-mail: gk@gursey.com. Website: www.gursey.com. Contact Gary Krausz. Gursey/Schneider specializes in forensic accounting and litigation support services in the areas of civil litigation, business disputes, bankruptcy, damage and cost-profit insurance claims, court accountings, fraud investigations, accounting malpractices, intellectual property, construction, government accounting, and entertainment litigation. Gursey/Schneider has over 35 years of experience as expert witnesses in accounting related matters. See display ad on page 41.

COMPOSITE & FIBERGLASS MATERIALS

KARS’ ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: info@karslab.com. Website: www.karslab.com. Contact Dr. Ramesh Kar, Dr. Naresh Kar, Dr. Nikhil Kar. Southern California’s premier materials/mechanical/structural/forensics laboratory. Registered professional engineers with 30+ years in metalurgical/forensic structural/mechanical failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are Fellows of American Society for Metals and Fellows, American College of Forensic Examiners. See display ad on page 57.

COMPUTER FORENSICS

DATACHASERS, INC.
P.O. Box 2861, Riverside, CA 92516-2861, (877) 328-2392, (951) 780-7892, e-mail: Admin@datachasers.com. Website: www.DataChasers.com. E-Discovery: Full e-discovery services; you give us the mountain, we give you the mole hill: Tiff production, de-duplication, redaction, Bates-stamped data, and electronically stored information (ESI) production. Computer forensic: full forensic computer lab. Recovering deleted text files (documents), graphics (pictures), date codes on all files, e-mail, and tracing Internet activity, Intellectual property cases, family law, employment law, probate resolution, asset verification, criminal law (prosecution or defense), etc. Litigation support, trial preparation, experienced expert witnesses, and professional courtroom displays. See display ad on page 43.

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: dnolte@fulcrum.com. Website: www.fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professors, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequaled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, loss profit studies, business and intangible asset valuations, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, competitive surveys, analysis of computerized data, injury and employment damages, and a wide range of other financial advisory services. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad on back cover.

SETEC INVESTIGATIONS
8391 Beverly Boulevard, Suite 167, Los Angeles, CA 90036, (323) 939-5481, e-mail: tstefan@setecinvestigations.com. Website: www.setecinvestigations.com. Contact Todd Stefan. Setec Investigations offers unparalleled expertise in computer forensics and enterprise investigations pro-

Cross examine

thousands of experts

with one phone call.

1-800-555-5422 www.ForensisGroup.com Experts@ForensisGroup.com

ForensisGroup
THE EXPERT OF EXPERTS

SECURITIES

 Securities & Business Law
 SEC Enforcement Defense
 International Business & Securities
 Class & Derivative Actions
 Insider Trading
 NYSE, AMEX, FINRA, DOC Disciplinary Proceedings
 Broker-Dealer, Investment Company & Investment Adviser Matters
 Liability Under Federal & State Securities Laws
 Internet Securities
 Securities Arbitration
 Law Firm Liability

Robert C. Rosen

AV Retired, Former Chair, LACBA Business & Corporations Law Section, LL.M Harvard Law School 40 years practicing Securities and Business Law, 12 years with the U.S. Securities and Exchange Commission, Washington D.C. Published Author of Securities Regulations, including eight volume treatise.

Rosen & Associates, P.C.

LAW OFFICES
Citigroup Center 444 S. Flower Street, 30th Floor Los Angeles, CA 90071
Tel: 213/362-1000 Fax: 213/362-1001
Web site: Rosen-law.com E-mail: robertrosen@rosen-law.com

Los Angeles Lawyer November 2015 39
viding personalized, case-specific forensic analysis and litigation support services for law firms and corporations. Setec Investigations possesses the necessary combination of technical expertise, understanding of the litigation process and technology, enabling the discovery, collection, investigation, and production of electronic information for investigating and handling computer-related crimes or misuse. Our expertise includes computer forensics, electronic discovery, litigation support, and expert witness testimony.

COMPUTERS/INFORMATION SCIENCES

COSGROVE COMPUTER SYSTEMS, INC.
7411 Eartlobe Avenue, Playa del Rey, CA 90293, (310) 823-9448, fax (310) 821-4201, e-mail: cosgrove@computer.org. Website: www.cosgrovecomputer.com. Contact John Cosgrove. John Cosgrove, PE, has over 50 years of experience in computer systems and has been a self-employed, consulting software engineer since 1970. He was a part-time lecturer in the UCLA Computer Science program and in LMU graduate schools. He provided an invited article, “Software Engineering and Litigation,” for the Encyclopedia of Software Engineering. He is a Certified Forensic Examiner (CFE), holds the CIP, is a member of ACM, ACMFE, FEA, a life senior member of IEEE Computer Society, NSPE, a Fellow of the National Academy of Forensic Engineers (an affiliate of NSPE), and a professional engineer in California. Formal education includes a BS in Electrical Engineering (now LMU) and a number of engineers from UCLA. He currently serves as President of the UCLA Engineering Alumni Association.

CONSTRUCTION

FORENSISGROUP EXPERT WITNESS SERVICES SINCE 1991
301 North Lake Avenue, Suite 420, Pasadena, CA 91101, (800) 555-5422, (626) 795-5000, fax (626) 795-4050, e-mail: info@forensisgroup.com. Website: www.forensisgroup.com. Contact Mercy Steenwyk. 10,000 cases ForensisGroup has provided experts. 8,000 clients have retained experts from us. We respond in one hour or less. ForensisGroup is an expert witness and consulting company providing experts, expert witnesses, and consultants to law firms, insurance companies, and other public and private firms in thousands of disciplines: construction, engineering, business, accounting, intellectual property, computers, IT, medical, real estate, insurance, product liability, premises liability, safety, and others, including complex and hard-to-find disciplines. Let us give you the technical advantage and competitive edge in your cases. Referrals, customized searches, and initial phone consultations are free. See display ad on page 39.

GLENN M. GELMAN & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISERS
1940 E. 17th Street, Santa Ana, CA 92705, (714) 667-2800, fax (714) 667-2836, e-mail: rscuar@gmgcpca.com. Website: www.gmgcpca.com. Contact Richard M. Scaf, Exclusive LA and Orange County representative for CICPAC (Construction Industry CPA Association) This is a nationwide network of CPA firms specifically selected for their experience in and commitment to serving the construction industry. We are one of only six firms in all of California that are members of this prestigious organization. We provide these litigation support services: expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accountings, and trial exhibit preparation. Our areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits distortion, tax consequences of settlements, reconstitution of accounting records, embezzlement and fraud, contract costs, lost profits, construction claims, and damage computations, cases. Honored by Construction Link as the “Best Accounting Firm for the Construction Industry.” Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 42.

KGA, INC.

MPGROUP
1202 Greenacre Avenue, West Hollywood, CA 90046-5706, (213) 824-9849, e-mail: mplogos@mpgroup.com, e-mail: info@mpgroup.com. Website: www.mpgroup.com. Contact Michael S. Polles, GC, CM, RCI, DABFET, ACFE. MPGroup is collaboration of architects, engineers, contractors, and other construction technical experts skilled in the design, management, and construction of all types of buildings for human occupancy: commercial, industrial, institutional, healthcare, fire and police stations, schools, single-family residential and multi-family residential. We provide legal counsel with more than 50 years of construction experience.

CONSTRUCTION DISPUTES

ARCADIS
445 South Figueroa Street, Suite 3650, Los Angeles, CA 90071, (213) 797-5275, fax (213) 486-9894, e-mail: christi.full@arcadis-us.com. Website: www.arcadis-us.com. Contact Christi Fu, PE, LEED AP, CCM. ARCADIS is an industry leader in the analysis of construction claims and specializes in the avoidance, litigation and resolution of construction disputes. Our firm offers a full range of services, including litigation support, expert testimony, schedule analysis, change order evaluation, delay/impact analysis, discovery/deposition assistance, cause-effect-impact analysis, contract for financial audits, merit analysis, document database envelopment/management, and performance audits.

CONTRACTORS LICENSING (CSLB)
OFFICES OF ROBERT B. BERRIGAN
2366 Fair Oaks Boulevard, Sacramento, CA 95825, (916) 640-8807, fax (916) 973-0723 e-mail: rberrigan@yahoo.com. Website: www.contractorslicensing.com. Contact Robert B. Berrigan, Esq. Specially, Consulting on all issues related to Contractor licensing in California, proper license classification to perform work, B & P section 7051 Special Issues, Contractor State License Board (CSLB) investigations and disciplinary Proceedings. Experienced expert witness at trial/arbitration, Degrees/licenses: BA, JD, Commercial Pilot, SEL, MEL.

CORPORATE AND SECURITIES

PETILLON HIRAIDE LLP
21515 Hawthorne Boulevard, Suite 1260, Torrance, CA 90505, (310) 543-0500, fax (310) 543-0505, e-mail: mhiraide@phcplaw.com. Website: www.phcplaw.com. Contact Mark Hiraide. Expert witness in the following areas: formation of corporations, partnerships, and limited liability companies, governance, fiduciary duties of officers and directors, and majority shareholders, venture and acquisition issues; violation of securities laws; and legal malpractice of lawyers.

CORPORATE INVESTIGATIONS

FULCRUM INQUIRY
888 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 881-1300, e-mail: info@fulcrum.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professionals, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unprecedented record of successful court cases and client recoveries. Our expertise encompasses damages and losses, business and intangible asset valuations, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, competitive surveys, analysis of computerized data, injury and employment damages, and all forms of financial advisory services. Degrees/licenses: CPAs, CFAs, ASAs, Ph.Ds, and MBAs in accounting, finance, economics, and related subjects. See display ad on back cover.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HURT
15490 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91403, (818) 981-4226, fax (818) 981-4278, 4 Park Plaza, 2nd Floor, Irvine, CA 92614, (949) 219-9816, fax (949) 219-9815, e-mail: expert@wwzh.com. Website: www.wwzh.com. Contact Barbara Luna. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, and marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specialties include accounting, breach of contract, breach of fiduciary duty, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property (including trademark, patent, and copyright infringement), and trade secrets. Significant expertise in marital dissolution, personal injury, product liability, real estate, securities, tax planning and preparation, IRS audit defense, tracing, unfair advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 51.

COURTROOM PRESENTATION TECHNOLOGY

ON THE RECORD, INC.
5777 Century Boulevard, Suite 1415, Los Angeles, CA 90045, (310) 342-7170, fax (310) 342-7172, e-mail: ken@ontherecord.com. Contact Ken Kotarski. On The Record (OTR) is a high-ranking, full-service trial presentation and litigation support firm specializing in the preparation, presentation, and demonstration of fully integrated evidence presentation systems at trials as well as other dispute resolution proceedings. For nearly 20 years, On The Record has assisted thousands of attorneys nationwide and around the globe with the integration of documents, photographs, graphics, video, animation, and other exhibits into a clear and convincing computer-based courtroom presentation. From the conference room to the war room to the courtroom, OTR provides customized presentation support services and equipment configurations for any litigation communications challenge and venue. On The Record—The Trial Presentation Professionals. www.onthercord.com. See display ad on page 55.

DENTIST

RICHARD BENVENISTE, DDS, MSD
19231 Victory Boulevard, Suite 256, Reseda, CA 91335, (818) 881-7337, fax (818) 881-6183, e-mail: yourgums@gmail.com. Website: www.yourgums.com. Contact Richard Benveniste, DDS, MSD. Previous three-term officer of State Dental Board of California, having ruled on all phases of dental practice. Practicing as an expert, consultant, evaluator and teacher in the treatment of TMJ, personal injury (PI), litigation, and dental injury. Multiple distinguished service citations from California State Department of Consumer Affairs. Provider of continuing education courses on oral diagnosis, oral medicine, treatment modalities, TMJ diagnosis and therapy. Multiple long-term professional organization memberships. Degrees/licenses: Doctor of Dental Surgery, (DDS); Master of Science in Dentistry (MSD).
Setting the standard in litigation support

- Court Accounting
- Marital Dissolution
- Business Valuation
- Professional Malpractice
- Expert Witness Testimony
- Receivership and Bankruptcy
- Damage and Lost Profit Assessment
- Tax and Accounting
- Business Management
CORNERSTONE RESEARCH
633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699. Website: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Cathy Ingham, Erin McGloghan, or Ashish Pradhan. For more than 25 years, Cornerstone Research staff have provided economic and financial analysis in all phases of commercial litigation and regulatory proceedings. We work with a broad network of testifying experts, including prominent faculty and industry practitioners, in a distinctive collaborative approach. The experts with whom we work bring the specialized expertise required to meet the demands of each assignment. Our areas of specialization include intellectual property, antitrust, securities, entertainment, real estate, financial institutions, and general business litigation.

FULCROm INQUIRY
889 South Figueroa Street, Suite 2000, Los Angeles, CA 90017, (213) 787-4100, fax (213) 891-1300, e-mail: rdschulze@fulcro.com, Website: www.fulcro.com. Contact David Nolte. Our professionals are experienced CPAs, MBAs, ASAs, CFAs, affiliated professionals, and industry specialists. Our analysis and research combined with unique presentation techniques have resulted in an unequalled record of successful court cases and client recoveries. Our expertise encompasses damages analysis, loss profit studies, business interruptions, fraud investigations, statistics, forensic economic analysis, royalty audits, strategic and market assessments, competitive surveys, analysis of computerized data, injury and employment damages, and a wide range of other financial advisory services. Degrees/licenses: CPAs, CFAs, ASAs, PhDs, and MBAs in accounting, finance, economics, and related subjects. See display ad on back cover.

GLENN M. GELMAN & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISERS
1940 East 17th Street, Santa Ana, CA 92705, (714) 687-2600, fax (714) 687-2636, e-mail: mrsquar@gmgcpa.com, Website: www.gmgcpa.com. Contact Richard M. Squar. Since 1983, our firm has specialized in delivering forensic accounting and litigation support services that give our clients an edge. We provide the quality and depth traditionally associated with Big Four firms with the personal attention and fee structure of a local firm. We are recognized throughout southern California for the effectiveness of our work. Areas of expertise include: business interruption, loss of earnings analysis, breach of contract, partnership dissolution, profits distribution, tax consequences of settlements, reconstruction of accounting records, embezzlement and fraud, contract costs, lost profits, construction claims, and damage computations cases. Our practice focuses on closely held entrepreneurial firms in the following industries: real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 300 cases. Our comprehensive case list is available upon request. See display ad on page 42.

GURSEY/SCHEIDLER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0960, fax (310) 557-3468, e-mail: gk@gursey.com, Website: www.gursey.com. Contact Gary Krauz. Gursey/Scheidler specializes in forensic accounting and litigation support services in the areas of civil litigation, business disputes, bankruptcy, damage and cost-profit insurance claims, court accountings, fraud investigations, accounting malpractice, intellectual property, construction, government account, and entertainment litigation. Gursey/Scheidler has over 35 years of experience as expert witnesses in accounting related matters. See display ad on page 41.

HIGGINS, MARCUS & LOVETT, INC.
800 South Figueroa Street, Suite 710, Los Angeles, CA 90017, (213) 617-7775, fax (213) 617-8932, e-mail: info@hmlinc.com, Contact Mark C. Higgins, ASA. The firm has over 30 years of litigation support and expert testimony experience in matters involving business valuation, economic damages, intellectual property, loss of business goodwill, and lost profits. Areas of practice include business disputes, eminent domain, bankruptcy, and corporate and matrimonial dissolution. See display ad on page 43.

MCGLADREY LLP
515 South Flower Street, 41st Floor, Los Angeles, CA 90071, (213) 530-4600, e-mail: patrick.chylvinski@mcgladrey.com. Website: www.mcgladrey.com. Contact Patrick Chylvinski. McGladrey is the 5th largest accounting and consulting firm in the United States. Our litigation consulting and financial forensics practice focuses on assisting counsel and clients in the areas of business and commercial litigation, forensic analysis, fraud investigations, contract compliance, and royalty inspection matters. We have extensive experience in the areas of damages, lost profits, and forensic analysis as they relate to contract, post-closing, real estate, and fee disputes. Our experts have experience testifying in state and federal courts. Degrees/Licenses: CPAs, MBAs, JDs, CFAs, CVAs, ASAs, CFFs. See display ad on page 35.

MICHAEL D. ROSEN, CPA, PHD, ABV
3780 Kilroy Airport Way, Suite 200, Long Beach, CA 90808, (562) 256-7052, fax (562) 256-7001, e-mail: mrosenca@aol.com, Website: www.mrosencpa.com. Contact Michael D. Rosen. We are litigation consultants, forensic accountants, expert witnesses. Our mission is to tell the financial story that underlies every business litigation matter and to convey that story in a clear and concise manner to the trier of fact. Our findings allow a realistic assessment of the case and support settlement efforts. Our work is designed to render conclusive opinions and to withstand cross-examination. We specialize in business damages (lost profits and loss in value), personal damages (lost earnings), and business valuation.

SCHULZ HAYNES LOEVENGUTH & CO.
660 South Figueroa Street, Suite 1280, Los Angeles, CA 90017, (213) 627-8280, fax (213) 627-8301, e-mail: kshulze@schulzhaynes.com, Website: www.schulzhaynes.com. Contact Kari J. Schulz, president. Specialties: forensic business analysis and accounting, lost profits, economic damages, expert testimony, discovery assistance, business valuations, corporate recovery, financial analysis, and modeling. Member of major professional organizations, experience across a broad spectrum of industries and business issues. Degrees/licenses: CPA, CVA, CFE, ABV, PhD-Economics. See display ad on page 49.

STOUT RISIUS ROSS, INC.
10100 Santa Monica Boulevard, Suite 975, Los Angeles, CA 90067, (310) 631-3192, fax (866) 555-5135, e-mail: sklum@srr.com, Website: www.SRR.com. Contact Sidney P. Blum, CPA, CFE, CPEA, CFF. Economic damages, royalty audit, valuation and forensics expert. Performs financial, accounting, intellectual property, patent, copyright, trademark, wrongful termination, breach of contract, class action, economic, fraud, Digital Millennium Copyright Act, and business damage calculations. World leading authority on royalty and contract auditing having conducted thousands of examinations. Damages expert witness in business and personal injury litigation matters from simple to complex matters involving claims of $100MM+. Testified in U.S. District Court, Superior Court, USITC, arbitrations and depositions. See display ad on page 45.

WARONZOF ASSOCIATES, INC.
400 Continental Boulevard, Sixth Floor, El Segundo, CA 90245, (310) 322-7744, fax (424) 245-3580. Website: www.waronzof.com. Contact Timothy R. Lowe, MAI, CRE. Waronzof provides real estate and land use litigation support services including economic damages, lost profits, financial feasibility, lease dispute, property value, enterprise value, partnership interest and closely held share value, fair compensation, lender liability, and reorganization plan feasibility. Professional staff of five with advanced degrees and training in real estate, finance, urban planning, and accounting. See display ad on page 49.

WHITE, ZUCKERMAN, WARSZAVSKY, LUNA & HUNT

ZIVETZ, SCHWARTZ & SALTSMAN, CPAS

ECONOMICS
ADVISORS/EXPERTS @ MCS ASSOCIATES
18881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Website: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages assessments, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

Business litigation is increasingly complex. That is why we believe valuation issues must be addressed with the same meticulous care as legal issues. Analysis must be clear. Opinions must be defensible. Expert testimony must be thorough and articulate. HML has extensive trial experience and can provide legal counsel with a powerful resource for expert testimony and litigation support.

For More Information Call 213-617-7775
Or visit us on the web at www.hmlinc.com

BUSINESS VALUATION • LOSS OF GOODWILL • ECONOMIC DAMAGES • LOST PROFITS
EMBEZLEMENT AND FRAUD

GLENN M. GELMAN & ASSOCIATES CERTIFIED PUBLIC ACCOUNTANTS AND BUSINESS ADVISERS

1940 East 17th Street, Santa Ana, CA 92705, (714) 667-2600, fax (714) 667-2636, e-mail: rgm@agfcpa.com. Website: www.agfcpa.com.

Contact Richard M. Squar, Glenn M. Gelman and Associates provides a variety of high-quality services traditionally associated with the “Big Four” firms along with the personal attention that is the hallmark of local firms. Our litigation support services include: embezzlement and fraud, expert witness testimony, strategy development, document discovery, deposition assistance, computation of damages, arbitration consulting, forensic accounting, investigative auditing, rebuttal testimony, fiduciary accounting, and trial exhibit preparation and reconstruction of accounting records. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request.

EMPLOYMENT/DISCRIMINATION/ HARASSMENT/RETAILATION

HAIGHT CONSULTING

1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2988, fax (310) 454-4516. Contact Marcia Haight, SPHR-CA. Haight Consulting specializes in sexual harassment, ADA, Affirmative Action, discrimination, sexual harassment, retaliation, FMLA/CFRA, safety, and wrongful termination. Courtroom testimony and deposition experience. Refer to www.haightconsulting.com for 100 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer procedures. Assist counsel via preliminary analysis, document examination, strategy, examination of documents, and expert testimony.

HMR CONSULTING, INC.

2050 Gateway Place, Suite 100-177, San Jose, CA 95110, (729) 792-7805, fax (729) 792-8790, e-mail: bdelmas@hmrconsulting.com. Contact Beth Brascugli De Lima, MBA, SPHR—CA. HMR Consulting specializes in employment ADA accommodation, FEHA, FMLA, CFRA, ADA & accommodation violations. Wrongful termination, performance management, discrimination, sexual harassment, exempt analysis, labor market assessment, and vocational evaluations. She holds national and California certifications—Senior Professional in Human Resources (SPHR-CA), certified mediator, and consulting since 1992.

EMPLOYMENT/WAGE EARNING CAPACITY

CALIFORNIA CAREER SERVICES

8727 West Third St., Suite 204, Los Angeles, CA 90048, (310) 550-6047, fax (310) 550-6053 e-mail: susan@californiacaererservices.com. Website: www.californiacaererservices.com. Contact Susan Wise Miller, MA, Executive Career Consultant specializing in divorce cases. Conduct vocational/educational analysis, labor market research, write reports and testify on employability and earning capacity issues.

ENGINEER/TRAFFIC

WILLIAM KUNZMAN, PE

1111 Town and Country #34, Orange, CA 92868, (714) 973-8383, fax (714) 973-8821, e-mail: biff@traffic-engineer.com. Website: www.trafficengineer.com. Contact William Kunzman, PE. Traffic expert witness since 1979, both defense and plaintiff. Auto, pedestrian, bicycle, and motorcycle accidents. Largest plaintiff verdicts: 1) $12,200,000 in pedestrian accident case against Caltrans, 2) $10,300,000 in case against Los Angeles Unified School District. Largest settlement: $2,000,000 solo vehicle accident case against Caltrans. Best defense verdicts: 1) $0 while defending Caltrans and opposition sought $16,000,000. 2) $0 defending City of Long Beach and opposition sought $15,000,000. Before becoming expert witness, employed by Los Angeles County Road Department, Riverside County Road Department, City of Irvine, and Federal Highway Administration. Knowledge of governmental agency procedures, design, geometry, traffic controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA, graduate work—Yale University.

ENGINEERING

4X FOREX ENGINEERING LABORATORIES, INC.

5262 Oceanus Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 940 @4xforensics.com. Website: www.4xforensics.com. Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory, providing expert witness and analytical and testing services in the following areas: fires and explosions: electrical and gas product defect investigations, thermal and fire modeling and laboratory testing; water loss: materials, corrosion, analysis of plumbing products; failure analysis: metalurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

A & E FORENSICS

2121 Montiel Road, San Carlos, CA 94070, (877) 839-7302, fax (760) 480-7477, e-mail: steve@aeforensics.com. Website: www.aeforensics.com. Contact Steve Norris, AIA, PE, GE, HG, CEG, CASp, LEED. Architect, engineer, contractor—standards of care expert. Patented over 200 times, deposed over 100 times, and testified in trial over 20 times. Waterproofing, water intrusion, building envelope, zoning setbacks, concrete performance, path of travel, structural analysis, earthquake fire damage, and plan analysis. Landslides, retaining wall failure, settlement, flooding, grading, septic, expansive soils, mud flows, pavement distress, ground water evaluation, and slope analysis. Cost estimates, construction management, delay analysis, and contracts. Serving all California, Hawaii, and Oklahoma. See display ad on page 43.

EXPONENT

5401 McConnell Avenue, Los Angeles, CA 90066, (310) 754-2700, fax (310) 754-2799, e-mail: reza @exponent.com. Website: www.exponent.com. Contact Ali Reza. Specialize in forensic metalurgy and mechanical engineering, structural and geometric, accident reconstruction and analysis, human factors, risk and reliability assessment, toxicology and human health, biometrics, electrical and electronic devices, aviation, and forensic engineering, water resources, solid waste and air quality, forensic engineering, water resources, solid waste and air quality. See display ad on page 35.

SCS ENGINEERS

3900 Kilsby Airport Way, Suite 100, Long Beach, CA 90806, (562) 428-9544, fax (562) 427-2085, e-mail: juniorengineers@scsengineers.com. Contact Julio Nuno, VP. SCS engineers provide expert witness services related to environmental studies and engineering, water resources, solid waste and air quality, and industrial hygiene and safety services. We are a 45-year old consulting firm with 60 offices across the US and nearly 800 employees. Our Long Beach office has more than 30 professional engineers, scientists, and subject matter experts available on short notice to serve asbestos, lead-based paint, and other specialty areas requiring expert witness services.

ENGINEERING/GEOTECHNICAL

COTTON, SHIRES AND ASSOCIATES, INC.

Southern California branch: serving greater So. Cal. area, (805) 375-1050, fax (805) 375-1059, e-mail: mwhipp@cottontshire.com. Website: www.49 Los Angeles Lawyer November 2015
Expert Witnesses and Financial Advisors to California Counsel

Complex commercial litigation damages
Royalty & contract audits
Intellectual property litigation damages
Fraud and forensic investigations
Transaction and valuation disputes
Marital disputes
E-Discovery & data forensics
Investment banking
Business valuations

For more information, contact:
Sidney P. Blum, Managing Director
sblum@srr.com  |  ph: +1.818.631.3192

LOS ANGELES  |  CENTURY CITY

SRR.COM

SRR is a trade name for Stout Risius Ross, Inc. and Stout Risius Ross Advisors, LLC, a FINRA registered broker-dealer and SIPC member firm.
ENVIRONMENTAL SCS ENGINEERS
3900 Kilroy Airport Way, Suite 100, Long Beach, CA 90806, (562) 426-9544, fax (562) 427-0835, e-mail: jnuno@scsengineers.com. Website: www.scsengineers.com. Contact Julio Nuno, V.P., SCS provides expert witness services related to environmental studies and engineering, water resources, solid waste and air quality, industrial hygiene and safety services. We are a 45-year old consulting firm with 68 offices across the US and nearly 800 employees. Our Long Beach office has more than 30 professional engineers, scientists, and technicians available on short notice to serve as experts, lead-based paint, and other specialty areas requiring expert witness services.

THE REYNOLDS GROUP
P.O. Box 1996, Tustin, CA 92781-1996, (714) 730-5397, fax (714) 730-6476, e-mail: edreymonds@reyheart.com, Website: www.reynolds-group.com. Contact Phil Van Herle. The Reynolds Group is an environmental consulting, contracting firm. Expertise: environmental contamination, assessment, remediation, reasonable value of construction, standard of care, and related financial matters. Degrees in Civil Engineering, U.S.C. (BS), University of Houston (MS), (MBA) Harvard. California Registered Civil Engineer, Licensed A, B, HAZ California Contractor. Adjunct Faculty, Member USC School of Engineering (Construction Management) and former Member USC’s Board of Councilors.

ENVIRONMENTAL ENGINEER WZI INC. (ENVIRONMENTAL ENGINEERS)
1717 28th Street, Bakersfield, CA 93301, (661) 326-1112, fax (661) 326-6480, e-mail: mjwilson@wziinc.com. Website: www.wziinc.com. Contact Mary Jane Wilson, PE. We are a regional engineering environmental consulting firm. Our Area Manager, Environmental and Renewable Energy Expert Witness Report EREPA 460085, Specialties include regulatory compliance, petroleum, and power generation.

ERISA/EMPLOYEE BENEFITS
ERISA EXPERT SERVICES, LLC
3443 Golden Gate Way, Suite H, Lafayette, CA 94549, e-mail: ggarofolo@erisa-experts.com. Website: www.erisa-experts.com. Contact Joseph A. Garofolo, JD. We provide expert witness services for the benefit of employers, beneficiaries, and fiduciaries faced with legal proceedings related to ERISA and other employee benefit laws. Our experts are knowledgeable and experienced in the interpretation and application of the complex laws and regulations governing employee benefit plans. These laws provide for the creation, maintenance, and operation of qualified retirement plans and other employee benefit arrangements. Our experts can assist with the interpretation and application of these laws, as well as the fiduciary responsibilities of plan administrators.

Nationally recognized banking, finance, insurance, and real estate consulting group established 1973. Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance and financial experts. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card, banking operations/administration, trusts and investments, economic analysis and assessment, mortgage origination, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

EXPERT REFERRAL SERVICE
PRO/CONSULT
TECHNICAL AND MEDICAL EXPERTS
1945 Palo Verde Avenue, Suite 200, Long Beach, CA 90815, (803) 392-1110, fax (803) 798-8921, e-mail: experts@pm.com. Website: www.expertinfo.com. Contact Jesse De La Torre. Right expert right away! We are listed and recommended by the A.M. Best Company. We welcome your rush case! 15,000 medical and technical experts in over 3,000 fields, many in the Southern California area, enables Pro/Consult to provide the best experts at a reasonable cost, including medical doctors for IME’s, biomechanical engineers, accident reconstruction, electrical engineers, fire cause and origin, neuropsychology, accounting and economics, metallurgy, engineering, plastics, appraisal and valuation, construction, human factors, insurance, lighting, marine, industrial hygiene, roof, safety, security, SOC, toxicity, MDs, RNs, etc. Free resume areas. See display ad on page 33.

TASA (TECHNICAL ADVISORY SERVICE FOR ATTORNEYS, A DIVISION OF THE TASA GROUP, INC.)
Providing Outstanding Local, National and Global Experts in All Categories. Plaintiff/Defense, Civil/Criminal. Contact Verna Morris, (803) 523-2319, fax (800) 929-8272, e-mail: experts@TASAnet.com. Website: www.TASAnet.com. Since 1956, TASA has been your source for a variety of superior quality, independent testing and consulting experts. We offer more than 11,000 diverse categories of expertise and hard-to-find specialties in technology, business, the arts, and sciences, including 1,000+ medical areas through our sister company, TASAmed. Our experienced referral advisors target your criteria and connect you with the experts available to discuss your case. There is no charge for our services until you engage or designate an expert witness we refer. Visit our website to search expert profiles by expertise, key word, order due diligence reports on your expert witness or opposing counsel’s, request an expert through our online form, and check out our e-Discovery and Cyber Security Solutions Knowledge Center to read expert-authored articles and view archived webinars. While on our website, you can register for upcoming webinars and sign up to receive our electronic newsletters. Save $175 (admin fee) on your first expert witness designation with Promo Code: LA1115, expires 3/31/2016. Be sure to check out our insert and display ad in this issue! Please see our insert in this issue and display ad on page 32.

EXPERT WITNESS
AMFS MEDICAL EXPERTS NATIONALWIDE
6425 Christie Avenue, Suite 260, Emeryville, CA 94608, (800) 275-8963. Website: www.AMFS.com. Welcome to AMFS where our in-house staff of attorneys and physicians are on-call to discuss your most important medical legal matters, advise you as to their merit, and locally coordinate the best medical experts to serve as expert witnesses and consultants. Based in California, AMFS has a 25-year history as the trusted medical expert partner to thousands of law firms across the country and over 15,000 physicians, surgeons, nurses, and related experts located in every U.S. jurisdiction. Please call Dan Sandman, Esq., at (800) 275-8963 to discuss your matter alongside one of our medical and legal assessment and lighting-fast expert placement. AMFS: world class medical specialists in over 5,000 areas of expertise. See display ad on page 55.

CAPATA & CO.
28202 Cabot Road, Suite 245, Laguna Niguel, CA 92677, (949) 384-0334, fax (949) 384-0362, e-mail: gary@capatax.com. Website: www.capatax.com. Contact Gary Capata, CPA. Litigation support and services including forensic accounting and investigations, economic damages, business valuation, lost profits analysis, fraud investigation, and expert witness services. Our extensive expertise, expertise, and unparalleled dedication to providing meticulous and credible information is what we provide to every client.

EXPERT WITNESS WEBSITES
EXPERT4LAW—THE LEGAL MARKETPLACE
(213) 896-6561, e-mail: forensics@laoba.com. Website: www.forensics@laoba.com. Contact Dan Sandman, Esq. Still haven’t found who you’re looking for? Expert4law—The Legal Marketplace is the best online directory for finding expert witnesses, legal consultants, litigation support, lawyer-to-lawyer networking, dispute resolution professionals, and law office technology. This comprehensive online directory is the one-stop site for your legal support needs. Available 24/7/365! Brought to you by the Los Angeles County Bar Association.

FAILRE ANALYSIS
4X FORENSIC ENGINEERING LABORATORIES, INC.
5262 Oceanus Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Website: www.4xforensic.com. Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and testing services in the following areas: fires and explosions, electrical and gas product defect investigations, thermal and fire modeling and laboratory testing; water loss: materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (800) 645-3369, e-mail: service@chemaxx.com. Website: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation -- specializing in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warnings, labels, MSDSs, disposal, safety, EPA, OSHA, DOT, propane, butane, portable butane stoves, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants), DOT certified (hazardous materials shipment). Certified fire and explosion investigator, OSHA process hazard analysis team leader. PhD physical chemistry. Extensive experience in metallurgy, corrosion, and failure analysis.

KARS’ ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: info@karslab.com. Website: www.karslab.com. Contact Dr. Ramesh Kar, Dr. Naresh Kar, Dr. Nikhil Kar. Southern California’s premier materials/mechanical/metallurgical/ structural/forensics laboratories for experienced professional engineers with 30+ years in metallurgical/forensic/structural/mechanical failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are Fellows of the American Society for Metals and Fellows, American College of Forensic Examiners. See display ad on page 57.
FAMILY LAW

BRIAN LEWIS & COMPANY
10900 Wilshire Boulevard, Suite 610, Los Angeles, CA 90024, (310) 475-5676, fax (310) 475-5268, e-mail: brian@brianlewis-cpa.com. Contact Brian Lewis, CPA, CVA. Forensic accounting, business valuations, cash spendable reports, estate, trust, and income tax services.

CBIZ & MAYER HOFFMAN MCCANN PC
10474 Santa Monica Boulevard, Suite 200, Los Angeles, CA 90025, (310) 268-2000, fax (310) 268-2001, e-mail: chansen@cbiz.com. Contact Coral Hansen. Website: www.MHM-PC.com, www.CBIZ.com. CBIZ & Mayer Hoffman McCann PC specializes in fraud investigations, forensic accounting, business litigation, commercial damage and lost profits computations, business valuation and appraisal, transactional due diligence, family limited partnerships, business interruption, and family law. We provide experienced expert testimony and tax controversy representation.

CMM, LLP
With office in Woodland Hills and El Segundo (818) 986-5070, fax (818) 986-5034, e-mail: sailen@cmmpcas.com. Website: www.cmmpcas.com. Contact Stuart Allen. Specializes: consultants who provide extensive experience, litigation support, and expert testimony regarding forensic accountants, fraud investigations, economic damages, business valuations, family law, bankruptcy, and reorganization. Degrees/licenses: CPAs, CFEs, MBAs. See display ad on page 35.

GURSEY|SCHNEIDER LLP
1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0600, fax (310) 557-3468, 20355 Hawthorne Boulevard, First Floor, Torrance, CA 90503, (310) 370-6122, fax (310) 370-6188, 2211 Michelson Drive, Suite 850, Irvine, CA 92612, (949) 265-9900, fax (949) 265-9901, e-mail: swasserman@gursey.com, rwatts@gursey.com or tkatz@gursey.com. Website: www.gursey.com. Contact Stephan Wasserman, Robert Watts or Tracy Katz. Forensic accounting and litigation support services in all areas relating to marital dissolution, including business valuation, tracing and apportionment of real property and assets, net spendable evaluations, determination of gross cash flow available for support and analysis of reimbursement claims and marital standards of living. See display ad on page 41.

HARGRAVE & HARGRAVE, AN ACCOUNTANCY CORPORATION
12121 Wilshire Boulevard, Suite 700, Los Angeles, CA 90025, (310) 576-1090, fax (310) 576-1080, e-mail: terry@hargraveandhargrave.com. Website: www.hargraveandhargrave.com. Contact Terry M. Hargrave, CPA/ABV/CFF, CFE. Forensic accounting and business valuation services for family law and civil cases. Past chair of California Society of CPAs’ Family Law Section and business valuation instructor for California CPA Education Foundation. Services include business valuations, income available for support, tracing separate property, litigation consulting, real estate litigation, mediation, fraud investigations, damage calculation, and other forensic accounting work.

HAYNIE & COMPANY, CPAS
4910 Campus Drive, Newport Beach, CA 92660-2119, (949) 724-1880, fax (949) 724-1889, e-mail: sgabrielson@hayniecpa.com. Website: www.hayniecpa.com. Contact Steven C. Gabrielson. Consulting and expert witness testimony in a variety of practice areas: commercial damages, ownership disputes, economic analysis, business valuation, lost profits analysis, fraudulent investigations, taxation, personal injury, wrongful termination, and professional liability.

KRKYLER, ERVIN, TAUBMAN, AND KAMINSKY
15303 Ventura Boulevard, Suite 1040, Sherman Oaks, CA 91403, (818) 995-1040, fax (818) 995-4124. Website: www.ketkcpa.com. Contact Michael J. Krycler. Litigation support, including forensic accounting, busi-
ness appraisals, family law accounting, business and professional valuations, damages, fraud investigations, and lost earnings. Krycier, Envin, Taubman, and Kaminovsky is a full-service accounting firm serving the legal community for more than 25 years. See display ad on page 38.

PAMELA WAX-SEMUS, CFE WS

107 North Rino Road, #402, Newbury Park, CA 91320, (805) 499-3035, fax (805) 496-0486, e-mail: tracing.queen@verizon.net. Web site: www.tracingqueen.net. Contact Pamela Wax-Semus, CFE. I am experienced in most areas of litigation support services with a particular emphasis in tracing of assets, real property allocation, stock option analysis, reimbursements and related allocation issues. I have vast experience not only in legal matters. My expertise expands to trust and probate accounting, fraud, and other litigation-related matters.

WHITE, ZUCKERMAN, WARSZAVSKY, LUNA & HUNT

15490 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91403, (818) 981-4226, fax (818) 981-4278, 4 Park Plaza, 2nd Floor, Irvine, CA 92614, (949) 219-9816, fax (949) 219-9055, e-mail: expert@wzh.com, Website: www.wzh.com. Contact Barbara Luna. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, and marital dissolution, and tax planning and preparation. Excellent communicators with extensive testimony experience. Prior Big Four accountants. Specializes in accounting, breach of contract, breach of fiduciary duty, business interruption, business dissolution, construction defects, delays, and cost overruns, fraud, insurance bad faith, intellectual property (including trademark, patent, and copyright infringement, and trade secrets), malpractice, marital dissolution, personal injury, product liability, real estate, securities, tax planning and preparation, IRS audit defense, advertising, unfair competition, valuation of businesses, and wrongful termination. See display ad on page 51.

ZIVETZ, SCHWARTZ & SALTSMAN, CPAS


FAMILY MEDICINE

ELLIOIT D. FELMAN, MD

1521 Wilshire Boulevard, Suite 301, Santa Monica, CA 90402, (310) 260-2221, e-mail: drfelman@earthlink.net. Contact Dr. Felman. Dr. Felman’s experience, testimony, and successful court cases and client recoveries. Our expertise encompasses damages analysis, loss of profit studies, business and intangible asset valuations, fraud investigations, statistics, forensic accounts, fraud analyses, investigation, audit of earnings, and loss of earnings vulnerability issues. Call (310) 260-7575, e-mail: dnfelman@earthlink.net. Website: www.felmanf.com. Contact Joel Mark. Consulting/ expert witness experience: Seventy-five assignments in attorney fee disputes; attorney ethics, attorney malpractice (litigation). Specialties include business litigation, intellectual property, commercial law, professional liability, and banking. Previous position/appointments: California State Bar Committee on Mandatory Fee Arbitration, California State Bar Committee on Professional Responsibility and Conduct; appointed expert consultant by the Los Angeles County Superior Court, State Bar MPA Presiding Arbitrator (2009-2012); State Bar of California Special Deputy Trial Counsel for Disciplinary Matters (2010-present). Member of professional societies: LABCA, Ventura County Bar Association; State Bar of California. Degrees/license: UC Berkeley (JD, 1969), UC Berkeley; Hastings College of Law (JD, 1972); Admitted California 1972, Colorado, 1994.

FINANCIAL

ADVISORS/EXPERTS @ MCS ASSOCIATES

1881 Von Karman, Suite 1175, Irvine, CA 92612, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Website: www.mcsassociates.com, Contact Norman Katz, managing partner. National recognition in banking, finance, insurance, and real estate consulting group (established 1973). Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies, in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card, banking operations/administration, trusts and investments, economic analyses of lost damages, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

CORNERSTONE RESEARCH


CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.

9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85749, (800) 645-3389, e-mail: evrice@chemaxo.com. Website: www.chemaxo.com. Contact Dr. Michael Fox. Passive chemical accident investigation—specializing in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical packaging, handling and shipping, burns, warnings, labels, MDSDFs, disposal, safety, EPA, OSHA, DOT, propane, butane, portable butane stoves, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants). DOT certified (hazardous materials shipment). Certified fire and explosion investigator, OSHA process hazard analysis testing, PHD physicist, metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 51.

FIRE/EXPLOSIONS

4X FORENSIC ENGINEERING LABORATORIES, INC.

5262 Ocean Drive, Huntington Beach, CA 92649, (714) 450-8550, fax (714) 450-8559, e-mail: phil@4xforensics.com, Website: www.4xforensics.com. Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: fires and explosions: electrical and gas product defect investigations, thermal fire and modeling and laboratory testing; water loss: materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability.

FOOD SAFETY/CRIMINALISTICS

MOORE FORENSICS

829 West Palmdale Boulevard, Suite 87, Palmdale, CA 93551, (661) 811-5176, e-mail: corelforensics@att.net. Contact William Moore. Moore’s evidence analysis, including shocked scene reconstruction, functionality testing, bullet and cartridge case comparison, California Assault Weapon examination, and distance determination.

FOOD SAFETY/HACCP

FOOD SAFETY AND HACCP COMPLIANCE

20938 De Mina Street, Woodland Hills, CA 91364, (818) 703-7147, e-mail: jeffneiken@aol.com. Website: www.foodsafetycoach.com. Contact Jeff Neiken, BS, MA. Moore’s food safety credentials in both food safety, accident prevention and hazard analysis critical control point development. Specializes in expert witness testimony and litigation consultant in matters regarding food safety, warehousing, and convenience food products. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical accidents and chemical related consumer product injuries, chemical fires and explosions, chemical packaging, handling and shipping, burns, warnings, labels, MDSDFs, disposal, safety, EPA, OSHA, DOT, propane, butane, portable butane stoves, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (hairspray, spray paint, refrigerants). DOT certified (hazardous materials shipment). Certified fire and explosion investigator, OSHA process hazard analysis testing, PHD physicist, metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability.
provider with the Los Angeles County Health Department. Provider # D015. Forensic food safety expert. Food safety expert for CBS, NBC, Inside Edition, and CNN. Free consultation for law firms and insurance companies.

**FORENSIC ANALYSIS**

**MCGLADREY LLP**

515 South Flower Street, 41st Floor, Los Angeles, CA 90071, (213) 530-4656, e-mail:patrick.chylinski@mcgladrey.com. Web site: www.mcgladrey.com. Contact Patrick Chylinski. McGladrey is the 5th largest accounting and consulting firm in the United States. Our litigation consulting and financial forensics practice focuses on assisting counsel and clients in the areas of business and commercial litigation, forensic analysis, fraud investigations, contract compliance, and royalty inspection matters. We have extensive experience in the areas of damages, lost profits, and forensic analysis as they relate to contract, post-closing, real estate, and fee disputes. Our experts have experience testing at deposition, arbitration, and at trial in state and federal courts. Degrees/Licenses: CPAs, MBAs, JDs, CFEs, CVAs, ASAs, CFFs. See display ad on page 35.

**FORENSIC ACCOUNTING**

**CBIZ & MAYER HOFFMAN MCCANN PC**

10474 Santa Monica Boulevard, Suite 200, Los Angeles, CA 90025, (310) 286-2000, fax (310) 286-2001, e-mail:cbizen@cbiz.com. Contact Coral Hansen. Website: www.MHM-PC.com; www.CBIZ.com. CBIZ & Mayer Hoffman McCann PC specializes in fraud investigations, forensic accounting, business litigation, commercial damage and lost profits computations, business valuation and appraisal, transactional due diligence, family limited partnerships, business interruption, and family law. We provide experienced expert testimony and tax controversy representation.

**CORNERSTONE RESEARCH**

633 West Fifth Street, 31st Floor, Los Angeles, CA 90071-2005, (213) 553-2500, fax (213) 553-2699. Website: www.cornerstone.com. Contact George G. Strong, Jr., Richard W. Dalbeck, Katie J. Galley, Elaine Harwood, Caryln Irwin, Erin McGllogan, or Ashish Pradhan. For more than 25 years, Cornerstone Research staff have provided economic and financial analysis in all phases of commercial litigation and regulatory proceedings. We work with a broad network of testifying experts, including prominent faculty and industry practitioners, in a distinctive collaboration. Our practice focuses on closely held entrepreneurial firms in the following industries: construction, real estate development, equipment leasing, auto parts (wholesale and retail), manufacturing, and professional services. Glenn M. Gelman has been appointed and served as Special Master in litigation support matters and has testified over 30 times. Our comprehensive case list is available upon request. See display ad on page 42.

**GURSEY|SCHNEIDER LLP**

1888 Century Park East, Suite 900, Los Angeles, CA 90067, (310) 552-0660, fax (310) 557-3468. e-mail: gk@gursey.com. Website: www.gursey.com. Contact Gary Krausz. Gursey/Schneider specializes in forensic accounting and litigation support services in the areas of civil litigation, business disputes, bankruptcy, damage and cost-profit insurance claims, court accountings, fraud investigations, accounting malpractice, intellectual property, construction, government accounting, and entertainment litigation. Gursey/Schneider has over 35 years of experience as expert witnesses in accounting related matters. See display ad on page 41.

**RGL FORENSICS**

Los Angeles Office: 800 South Figueroa Street, Suite 980, Los Angeles, CA 90017, (213) 996-0900. Contact Alan Lurie, alurie@rgl.com. Rich Holstrom, holstrom@rgl.com. Orange County Office: 625 City Drive South, Suite 290, Orange, CA 92868, (714) 740-2100. Contact Hank Kahrs, hkahrs@rgl.com. San...
FRAUD INVESTIGATIONS

CBIZ & MAYER HOFFMAN MCCANN PC
10474 Santa Monica Boulevard, Suite 200, Los Angeles, CA 90025, (310) 268-2000, fax (310) 268-2001, e-mail: cbiz@mhpcc.com. CBIZ & Mayer Hoffman McCann PC specializes in fraud investigations, forensic accounting, business litigation, commercial damage and lost profits computations, business valuation and appraisal, transaction due diligence, family limited partnerships, business interruption, and family law. We provide experienced expert testimony and tax controversy representation.

GEOENGINEERING

A & E FORENSICS
2121 Montiel Road, San Marcos, CA 92069, (877) 839-7302, fax (760) 480-7477, e-mail: steve@aeconsulting.com. Website: www.aeforensics.com. Steve Norris, AIA, PE, GE, HG, CEG, CASp, LEED. Architect, engineer, contractor—standard of care expert. Retained over 200 times, testified in trial over 20 times. waterproofing, water intrusion, building envelope, zoning setbacks, concrete performance, path of travel, structural analysis, earthquake/fire damage, and plan analysis. Landslides, retaining walls, sinkholes, flooding, grading, septic, expansive soils, mud flows, pavement distress, ground water evaluation, and slope analysis. Cost estimations, construction management, delay analysis, and contracts. Serving all California, Hawaii, and Oklahoma. See display ad on page 43.

GERIATRICS

HAMPTON HEALTH, LTD™
JOHN H. FULLERTON, MD, MRO, CMD, CFP, FACP, AGSF, FAAPHM
1700 California Street, Suite 470, San Francisco, CA 94106, (415) 460-5532, fax (415) 376-5820, e-mail: minoparsa@gmail.com. Website: hamptonhealth@ltd.com. Contact Minoo Parsa. Services available: Board Certified in Internal Medicine, Geriatrics, Hospice, Palliative Medicine, Addiction Medicine, and Home Health; Licensed Medical Review Officer. Expertise: Medicare fraud cases for the government, toxicology/DUI, elder abuse including criminal defense of lay caregivers accused of homicide of demented relatives during end-of-life phase. Hospital, ambulance/outpatient, PI, medical malpractice, and LTC. Medical/hospice directrships. Testified over 200 times and reviewed more than 1,500 cases, including Medicare audits for the government. See display ad on page 42.

HANDWRITING

SANDRA L. HOMEDWOOD, FORENSIC DOCUMENT EXAMINER
1132 San Marino Drive, Suite 216, Lake San Marcos, CA 92078, (760) 931-2529, fax (760) 510-8412, e-mail: homedwoodde@sbcglobal.net. Contact Sandra L. Hoomedwood. Highly skilled and experienced document examiner and expert witness in many complex and high profile civil and criminal cases with fully equipped document laboratory. Specializing in handwriting and handwriting identification, handwriting of the elderly in financial elder abuse cases and will contests, and examination of altered medical and corporate records. Trained in government laboratory including specialized training by the FBI and other secret Service. Former government experience includes document examiner for the San Diego Police Department crime lab, Arizona State crime lab, San Diego County District Attorney’s office and San Luis Obispo and Santa Barbara District Attorney offices. Currently in private, criminal, and civil practice.
We are experts in damages, accounting and valuation. **Don’t settle for less.**

- Expert witnesses and litigation consultants for complex litigation involving analyses of lost profits, lost earnings and lost value of business, forensic accounting and fraud investigation
- Other areas include marital dissolution, accounting and tax
- Excellent communicators with extensive testimony experience
- Offices in Los Angeles and Orange County

Call us today. With our litigation consulting, extensive experience and expert testimony, you can focus your efforts where they are needed most.

White Zuckerman Warsavsky Luna Hunt LLP

Certified Public Accountants
Los Angeles Office
818-981-4226
Orange County Office
949-219-9816

www.wzwlh.com  E-mail: expert@wzwlh.com

OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100, Phoenix, AZ 85012, (602) 640-9324, fax (602) 640-9050, e-mail: nharrison@omlaw.com. Website: www.omlaw.com.

Contact Mark I. Harrison, Esq. Available for expert and consulting engagements involving the legal profession and judiciary, including legal ethics and judicial ethics. Retained as a testifying and/or consulting expert in legal or judicial ethics matters in more than 185 cases. Deposed and testified in more than 25 matters over the past 13 years.

LITIGATION

CAPATA & CO.
28202 Cabot Road, Suite 245, Laguna Niguel, CA 92677, (949) 364-0334, fax (949) 364-0362, e-mail: gary@capatax.com. Website: www.capatax.com.

Contact Gary Capata, CPA. Litigation support and services including forensic accounting and investigations, economic damages, business valuation, lost profits analysis, fraud investigation, and expert witness services. Our extensive experience, expertise, and unparalleled dedication to providing meticulous and credible information is what we provide to every client.

ROBERT C. ROSEN
Citigroup Center, 444 South Flower Street, 30th Floor, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Website: www.rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, FINRA, DOC disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, private offerings, Internet securities, and law firm liability. AV rated. Former chair, LACBA Business and Corporations Law Section. LLM, Harvard Law School. Forty years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, DC. Published author/editor of securities regulations, including multivolume treatises. See display ad on page 39.

LOST PROFITS ANALYSIS

MCGLADREY LLP
515 South Flower Street, 41st Floor, Los Angeles, CA 90071, (213) 330-4605, e-mail: patrick.chylinski@mcgladrey.com. Web site: www.mcgladrey.com.

Contact Patrick Chylinski. McGladrey is the 5th largest accounting and consulting firm in the United States. Our litigation consulting and financial forensics practice focuses on assisting counsel and clients in the areas of business and commercial litigation, forensic analysis, fraud investigations, contract compliance, and royalty inspection matters. We have extensive experience in the areas of damages, lost profits, and forensic analysis as they relate to contract, post-closing, real estate, and fee disputes. Our experts have experience testifying at deposition, arbitration, and at trial in state and federal courts. Degrees/Licenses: CPAs, MBAs, JDs, CFAs, CVA, ASA, CFFs. See display ad on page 35.

MARKETING

DR. MICHAEL A. KAMINS
6401 Warner Drive, Los Angeles CA 90048, (323) 868-9507, fax (631) 632-9412, email: michael.kamins@stonybrook.edu. Services offered include expert survey research/questionnaires design on Lanham act issues of confusion, secondary hearing, and dilution. I have knowledge of consumer behavior, marketing strategy, and marketing resources. I have worked on false advertising cases and misappropriation of celebrity identity.

MARKETING/ADVERTISING/BUSINESS

LARRY STEVEN LONDRE/LONDRE MARKETING CONSULTANTS, LLC/USC/CSUN
6000 South Para Way, Third Floor, Los Angeles, CA 90094, (310) 889-0230, fax (310) 889-0221, e-mail: LSL@LondreMarketing.com. Website: http://LondreMarketing.com. Contact Larry Steven Londre. Experienced expert in marketing, business, advertising, media, communication, advertising agencies, trademarks, and global marketing. Also senior lecturer at USC, CSUN, UCLA, and Pepperdine Universities.

MECHANICAL ENGINEERING

4X FORENSIC ENGINEERING LABORATORIES, INC.
5262 Oceanus Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Website: www.4xforensic.com.

Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: fires and explosions; electrical and gas product defect investigations, thermal and fire modeling and laboratory testing; water loss: materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

ACCOUNTING EXPERTS FOR BUSINESS LITIGATION

Thomas Neches
Certified Public Accountant
Accredited in Business Valuation
Certified Valuation Analyst
Certified Fraud Examiner
Certified in Financial Forensics

www.thomasneches.com

• Expert testimony
• Damages calculation
• Forensic accounting
• Business valuation
• Database analysis

Thomas Neches & Company LLP
633 West 5th Street, Suite 2800
Los Angeles, California 90071-2039

voice: (213) 624-8150
e-mail: tmn@thomasneches.com
METALLURGICAL AND CORROSION ENGINEER

4X FORENSIC ENGINEERING LABORATORIES, INC.
5262 Oceanus Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Website: www.4xforensic.com.

Contact Phil Van Herle. 4X Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: fires and explosions; electrical and gas product defect investigations; thermal and fire modeling and laboratory testing; water loss; materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

CHEMICAL ACCIDENT RECONSTRUCTION SERVICES, INC.
9121 East Tanque Verde Road, Suite 105, Tucson, AZ 85714, (800) 645-3695, e-mail: service@chemaxx.com. Website: www.chemaxx.com. Contact Dr. Michael Fox. Comprehensive chemical accident investigation—specializing in complex industrial chemical accidents and chemical related consumer product injuries; chemical fires and explosions, chemical labeling, chemical packaging, handling and shipping, burns, warranties, labels, MSDSs, disposal, safety, EPA, OSHA, DOT, propane, butane, portable butane stoves, natural gas, hydrogen, flammable liquids, hazardous chemicals, aerosols (spray paint, refrigerants), DOT certified (hazardous materials shipment), Certified fire and explosion investigator, OSHA process hazard analysis team leader, PhD physical chemistry. Extensive experience in metallurgy, corrosion, and failure analysis.

KARS’ ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: info@karslab.com. Website: www.karslab.com. Contact Dr. Ramesh Kar, Dr. Naresh Kar, Dr. Nikhil Kar. Southern California’s premier materials/mechanical/metallurgical/structural laboratory. Registered professional engineers with 30+ years in metallurgical/forensic/structural/mechanical failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are Fellows of American Society for Metals and Fellows, American College of Forensic Examiners. See display ad on page 57.

METEOROLOGY

AIR, WEATHER, AND SEA CONDITIONS, INC.
P.O. Box 512, Pacific Palisades, CA 90272, (818) 645-8632, fax (310) 454-7569, e-mail: AirWeather@acol.com. Website: www.weatherman.org. Contact Jay Rosenthal, AMS Certified Consulting Meteorologist (CCM). Experienced and authoritative expert testimony, reports and analyses of winds, rain, storms, fog, ice, lightning, climatic conditions, flooding, waves, special areas in wildfires, ice, dust, auto/boat/ship/aircraft accident reconstruction, property damage, slip and falls, construction, mold issues, homeland security applications, air pollution, transport, and risk identification. Movie industry applications, cinematography, and visual effects. Determining unusualness, normalcy, and foreseeability. Official data, site visits, clear and convincing testimony. See display ad on page 38.

ORTHOPEDIC SURGEON

MARC J. FRIEDMAN, MD
6815 Noble Avenue, Van Nuys, CA 91405, (818) 901-8600, fax (818) 901-8685, e-mail: mfriedman@laco.com. Website: www.laco.com. Contact Vanessa Espinal, ext. 2810/2910. Orthopedic shoulder and knee, consulting, and expert witness testimony. IME, AME, QME, and workers’ compensation evaluations.

WILLIAM B. STETSON, MD
191 South Buena Vista Street, Suite 470, Burbank, CA 91505, (818) 848-3030, fax (818) 848-2228, e-mail: drstetson@stetsonpowell.com. Website: www.sportsmediciner.com. Contact W. Stetson, MD. Dr. Stetson is fellowship trained in arthroscopic surgery of the shoulder, knee, elbow, and ankle. He is an Associate Clinical Professor of orthopedic surgery at the USC Keck School of Medicine. He also has extensive experience in sports medicine and orthopedic trauma.

PEDIATRIC EXPERT WITNESSES

MICHAEL WEINRAUB, MD, FAAP

PERSONAL INJURY

KGA, INC.

WHITE, ZUCKERMAN, WARSAVSKY, LUNA & HUNT
15400 Ventura Boulevard, Suite 300, Sherman Oaks, CA 91403, (818) 981-4226, fax (818) 981-4278, 4 Park Plaza, 2nd Floor, Irvine, CA 92614, (949) 219-9816, 219-9816, fax (949) 219-9816, e-mail: expert@wzh.com. Website: www.wzh.com. Contact Barbara Luna. Expert witness testimony for complex litigation involving damage analyses of lost profits, unjust enrichment, reasonable royalties, lost earnings, lost value of business, forensic accounting, fraud investigation, investigative analysis of liability, and marital dissolution, and tax planning and
PLASTIC AND COSMETIC RECONSTRUCTIVE SURGERY

JEFFREY L. ROSENBERG, MD, FACS.
120 South Spalding Drive, Suite 110, Beverly Hills, CA 90212, (310) 273-1001, fax: (310) 205-4581. Website: www.jlrosenbergmd.com. Contact Penny, IME, deposition, trial, medical report review, plastic and reconstruction surgery, and laser scar services.

JOHN M. SHAMOUN, MD, FACS, INC.

PLASTIC SURGERY/BURN SPECIALIST

JEFFREY L. ROSENBERG, MD

PLASTICS

KARS’ ADVANCED MATERIALS, INC.
Testing and Research Labs, 2528 West Woodland Drive, Anaheim, CA 92801-2636, (714) 527-7100, fax (714) 527-7169, e-mail: info@karslab.com, Website: www.karslab.com. Contact Dr. Ramesh Kar, Dr. Naresh Kar, Dr. Nikhil Kar, Southern California’s premier materials/mechanical/metallurgical/structural/forensics laboratory. Registered professional engineers with 30+ years in metallurgical/forensic/structural/mechanical failure analysis. Experienced with automotive, bicycles, tires, fire, paint, plumbing, corrosion, and structural failures. We work on both plaintiff and defendant cases. Complete in-house capabilities for tests. Extensive deposition and courtroom experience (civil and criminal investigations). Principals are Fellows of American Society for Metals and Fellows, American College of Forensic Examiners. See display ad on page 57.

PLUMBING

4X FORENSIC ENGINEERING LABORATORIES, INC.
5262 Oceana Drive, Huntington Beach, CA 92649, (714) 450-8500, fax (714) 450-8599, e-mail: phil@4xforensic.com. Website: www.4xforensic.com. Contact Phil Van Herle, 4x Forensic Engineering Laboratories is a full-service forensic engineering laboratory. We provide expert witness and analytical and testing services in the following areas: fires and explosions; electrical and gas product defect investigations, thermal and fire modeling and laboratory testing; water loss; materials, corrosion, and failure analysis of plumbing products; failure analysis: metallurgy, product testing, and computerized stress analysis; accident reconstruction: automotive, trucks, construction equipment, and premises liability. See display ad on page 35.

PODIATRY–FOOT SPECIALIST

STEVEN L. ROSENBERG, DPM

POLYPHARMACY

JACK TRIMARCO & ASSOCIATES POLYPHARMACY INC.
9454 Wilshire Boulevard, 6th Floor, Beverly Hills, CA 90212, (213) 247-2637, e-mail: jack@j trimarco.com, Website: www.jtrimarco.com. Contact Jack Trimarco. Former manager of the Federal Bureau of Investigation’s polygraph program in Los Angeles. Former Inspector General Polypgraph Program—Department of Energy. Nationally known and respected polygraph expert. I have the credentials you would want when your client polygraphed, a case reviewed, or a motion made regarding polygraph. My unique background allows me to bring the highest levels of service and expertise to any polygraph situation. Current member of the Ethics Committee, California Association of Polygraph Examiners (CAPE), Hundreds of appearances on national TV, including Dr. Phil, Oprah, Greta, Nancy Grace, O’Reilly Factor, and Hannity and Colmes. Degrees/licenses: BS Psychology, Certified APA, AAPC, CAPE, AFAE. See display ad on page 37.

PSYCHIATRY

MARIA T. LYMBERIS, MD, INC.
1500 Montana Avenue, Suite 201, Santa Monica, CA 90403, (310) 451-3152, e-mail: maria@lymberis.com. Website: www.lymberis.com. Contact Dr. Maria T. Lymberis, MD. Clinical Professor of Psychiatry, UCLA School of Medicine. Board Certified in adult, child/adolescent psychiatry, expert consultant Medical Board of California, forensic expert for psychiatric malpractice, sexual harassment, post-traumatic stress cases, and divorce/child custody and psychiatric evaluations for: fitness for duty and competency to stand trial.

PSYCHOLOGY/Psychological Assessment

JUDY HO, PHD, ABPP, CMHFE
LICENSED CLINICAL PSYCHOLOGIST
Assistant Professor at Pepperdine University, Diplomate, American Board of Professional Psychology, Diplomate, National Board of Forensic Examiners, 2730 Wilshire Boulevard, Suite 650, Santa Monica, CA 90403, (310) 748-8887, e-mail: drjudyho@gmail.com. Website: www.drjudyho.com. Dr. Ho provides forensic and neuropsychological evaluations used in legal settings to document a wide variety of psychologically relevant information, including Neuropsychological, IME, and Forensic Evaluations for civil & criminal cases including personal injury, fitness for duty, discrimination, sexual assault and trauma, professional licensing deficiencies, and psychological state/functioning at time of criminal offense. List of cases worked on available upon request. She provides expert testimony regarding psychological testing methods, results, and conclusions. List of cases worked on is available upon request. Dr. Ho is a diplomate of two specialty boards, has published empirical studies and book chapters, provides clinical supervision of a tenure-track faculty member at Pepperdine University Graduate School of Psychology.

QUESTIONED DOCUMENTS

SANDRA L. HOMewood, FORENSIC Document Examiner
1132 San Marino Drive, Suite 308, Lake San Marcos, CA 92038, (760) 261-2529, fax (760) 510-8412, e-mail: homewolfode@sbglobal.net. Contact Sandra L. Homewood. Highly skilled and experienced document examiner and expert witness in many complex cases. Member of the FBI and Secret Service. Former government expert in questioned documents examination. Current member of the Ethics Committee, California Association of Polygraph Examiners (CAPE), Hundreds of appearances on national TV, including Dr. Phil, Oprah, Greta, Nancy Grace, O’Reilly Factor, and Hannity and Colmes. Degrees/licenses: BS Psychology, Certified APA, AAPC, CAPE, AFAE. See display ad on page 37.

REAL ESTATE

ADVISORS/EXPERTS @ MCS ASSOCIATES
19225 Von Karran, Suite 1175, Irvine, CA 92621, (949) 263-8700, fax (949) 263-0770, e-mail: experts@mcsassociates.com. Website: www.mcsassociates.com. Contact Norman Katz, managing partner. Nationally recognized banking, finance, and real estate consulting group established in 1973. Experienced litigation consultants/experts include senior bankers, lenders, consultants, economists, accountants, insurance underwriters/brokers. Specialties include: lending customs, practices, policies in all types of lending (real estate, subprime, business/commercial, construction, consumer/credit card), banking operations/administration, trusts and investments, economic analysis and valuations/damages assessment, insurance claims, coverages and bad faith, real estate brokerage, appraisal, escrow, and title insurance.

CANTERBURY LAW GROUP
14300 North Northhright Boulevard, Suite 129, Scottsdale, AZ 85260, 480) 240-0040, fax (480) 656-5966, e-mail: ccherry@clgalz.com. Website: www.canterburylawgroup.com. Contact Craig Cherry. Real estate experts in: appraisal, sale/lease, acquisition, professional land management, land entitlements, zoning, due diligence, title policies, closings, fiduciary duties of loyalty, diligence and full disclosure, run pro forma analytics, joint ventures and acquires, expert witness. Expert in fiduciary standards of care when managing
third party real estate capital toward the highest and best use of land whether vacant, entitled, partially improved, or fully improved.

FORRY LAW GROUP; FORRY REALTY GROUP INC.
15501 San Fernando Mission Boulevard, Suite 309, Mission Hills, CA 91345, (818) 361-1321, fax (818) 365-6522, e-mail: Craig@forrylaw.com; forrylaw@aol.com. Website: www.forrylaw.com. Contact Craig E. Forry, JD, GRI, Realtor. Expert witness/consultant, broker/agent standard of care, escrow, real estate damages, foreclosure, real estate disclosure, HOA, landlord-tenant, leases, mortgages, transactions, residential and commercial, business agent/broker standard of care, and legal malpractice. Available for consultations, depositions, and courtroom testimony. Degrees/licenses: BA, JD. California attorney for 31 years. California broker for 11 years, Realtor. Graduate Realtor Institute. Memberships: National and California Association of Realtors; Southland Regional Association of Realtors; California State Bar; LACBA.

FORSTER REALITY ADVISORS
9350 Wilshire Boulevard, Suite 203, Beverly Hills, CA 90212, (888) 977-8989, fax: (424) 203-2036, e-mail: forsteradvisors@gmail.com. Website: www.realtyforensics.com. Contact Eric Forster, MBA, MAFF. Real estate and mortgage fraud, industry standards and practices. Commercial damages and loss of profits. Eric Forster has served as a special master of the court in a massive mortgage fraud case and is former chair of the ABA Expert Witness subcommittee.

SAML K. FRESHMAN, BA, JD
6151 West Century Boulevard, Suite 300, Los Angeles, CA 90045, (310) 410-2300, fax (310) 419-2919. Contact Samuel K. Freshman. Attorney and real estate broker since 1956, banker, professor legal malpractice, arbitration, brokerage malpractice, leases, syndication, construction, property management, finance, due diligence, conflict of interest, title insurance, banking, escrow, and development. Expert witness 30-plus years in state and federal courts. Twenty-one published articles, arbitrator and mediator, general partner $300,000,000+, shopping centers, apartments, and industrial property. JD Stanford (1956). See display ad on page 57.

LAWRENCE H. JACOBSON, ESQ.

MAURICE ROBINSON AND ASSOCIATES LLC
28 Dover Place, Manhattan Beach, CA 90266, (310) 640-9656, fax (310) 640-9276, e-mail: maurice@mauricerobinson.com. Web site: www.mauricerobinson.com. Contact R. Maurice Robinson, president. Hotel and real estate industry business issues, including market, economic and financial feasibility, valuation, and disputes between owner-operator, borrower-lender, and franchisor-franchisee. Fluent in management contracts, license agreements, ground and building leases, partnership and JV agreement, concession contracts, development agreements, and loan docs. Can estimate damages and appraise property values under multiple scenarios. Expert witness testimony, litigation strategy, consultation and support, damage calculations, lost profits analysis, real estate appraisals, deal structuring, workouts, new development, strategic planning, market demand assessment, acquisition due diligence, and economic, financial, and investment analysis.

INSURANCE BAD FAITH EXPERT
Clinton E. Miller, J.D., BCFE
Author: How Insurance Companies Settle Cases
39 YEARS EXPERIENCE
Qualified Trial Insurance Expert in Civil & Criminal Cases Nationwide
Tel 408.279.1034 | Email cement@aol.com | Fax 408.279.3562
www.quikpage.com/M/millerjd/

REAL ESTATE, BANKING, MALPRACTICE
EXPERT WITNESS – SAMUEL K. FRESHMAN, B.A., J.D.
Attorney and Real Estate Broker since 1956
Banker • Professor, Legal Malpractice • Arbitration • Brokerage • Malpractice
Leases • Syndication • Construction • Property Management • Finance • Due Diligence
Conflict of Interest • Title Insurance • Banking • Escrow
Expert Witness • 57+ years State & Federal Courts • 32 articles
Arbitrator • Mediator • Manager • $300,000,000+ Property
Author “Principles of Real Estate Syndication”
6151 W. CENTURY BOULEVARD, SUITE 300, LOS ANGELES, CA 90045
Tel 310.410.2300 Ext. 306 | Fax 310.410.2919 | sfreshman@standarmanagement.com
www.samuelkfreshman.com

KARS’ ADVANCED MATERIALS, INC.
TESTING & RESEARCH LABS
TEL 714.527.7100  FAX 714.527.7169  E-MAIL info@karslab.com
www.karslab.com
2528 West Woodland Drive, Anaheim CA 92801

The best legal minds in the country talk to us

- Metallurgical Failures
- Corrosion & Welding Failures
- Glass & Ceramic Failures
- Chairs/Ladders
- Automobile/Aerospace/Accident Investigations
- Plastics, Composites, Fiberglass Failures
- Bio-Medical/Orthopedic Implants
- Plumbing/Piping/ABS Failures
- Complete In-House Laboratory Testing & Analysis Facilities
- Expert Witnesses/Jury Verdicts
- Licensed Professional Engineers
- Materials & Mechanical Testing

Dr. Naresh Kar, Fellow ASM, Fellow ACFE
Dr. Ramesh Kar, Fellow ASM, Fellow ACFE
Dr. Nikhil Kar, PE
REAL ESTATE TITLE CONSULTING

PETRU CORPORATION

SPECIALIZATIONS

Haire Consultants

Petru Corporation has provided its services on multimillion-dollar projects in the following areas: formation of corporations, partnerships, and limited liability companies; governance, fiduciary duties of officers and directors, and majority shareholders; venture and acquisition issues; violation of securities laws; and legal malpractice of lawyers.

ROBERT C. ROSEN
Citigroup Center, 444 South Flower Street, 30th Floor, Los Angeles, CA 90071, (213) 362-1000, fax (213) 362-1001, e-mail: robertrosen@rosen-law.com. Website: www/rosen-law.com. Specializing in securities law, federal securities law enforcement, securities arbitration, and international securities, insider trading, NYSE, AMEX, FINRA, DOC disciplinary proceedings, broker-dealer, investment company and investment adviser matters, liability under federal and state securities laws, private offerings, Internet securities, and legal firm liability. AV rated. Former chair, LACBA Business and Corporations Law Section, LLM, Harvard Law School. Forty years practicing securities law, 12 years with the U.S. Securities and Exchange Commission, Washington, DC. Published author/editor of securities regulations, including multivolume treatises. See display ad on page 39.

SEXUAL HARASSMENT/DISCRIMINATION

HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2986, fax (310) 454-4516. Contact Marcia Haight, SHER—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and EEOC discrimination and harassment, retaliation, FMLA/CFRA, safety, and wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

SURVEY RESEARCH

DR. MICHAEL A. KAMINS
6401 Warner Drive, Los Angeles CA 90048, (323) 800-9007, fax (831) 632-9412, email: michael.kamins@atonybrook.edu. Services offered include expert survey research/questionnaires design on Lanham act issues of confusion, secondary hearing, and dilution. I have knowledge of consumer behavior, marketing strategy, and marketing resources. I have worked on false advertising cases and misappropriation of celebrity identity.

LITIGATION SURVEY RESEARCH EXPERT TESTIMONY

MMR STRATEGY GROUP
16501 Ventura Boulevard, Suite 601, Encino, CA 91436, (818) 464-2400, fax (818) 464-2399, e-mail: cjaffe@mmrstrategy.com. Contact Cheryl Jaffe. MMR Strategy Group (MMR) provides trial ready surveys, rebuttals, and expert witness services in marketing for intellectual property litigation. Our studies measure consumer attitudes and behaviors for matters involving topics such as confusion, secondary meaning, deceptive advertising, dilution, and claim substantiation. We work on matters involving trademarks, copyrights, advertising, pricing, and other intellectual property issues.

TITLE SEARCHING/REPORTS

PETRU CORPORATION
250 Hallock Drive, Suite 100, Santa Paula, CA 93060, (805) 933-1389, fax (805) 933-1380, e-mail: PetruCorporation.com. Website: www.PetruCorporation.com. Provides comprehensive real estate services. Specializing in all aspects of land acquisition, major project entitlement, project design, development, finance, marketing, and disposition. In-depth legal expertise in complex negotiations, reviewing and implementing ordinances, drafting agreements, structuring compliance, and directing teams of consultants and outside counsel.

SELECTED SERVICES

Rodino Associates

Haight, SPHR—CA. Contact Marcia...
TOXICOLOGY
HAMPTON HEALTH, LTD™
JOHN H. FULLERTON, MD, MRO, CMD, CFP, FACFAS, AGSF, FAAHPM
1700 California Street, Suite 470, San Francisco, CA 94109, (415) 460-5532, fax (415) 376-5820, e-mail: johnfullerton@hamptonhealth.com. Website: hamptonhealth.com. Contact John Fullerton. Services available: 1) Blood and body fluid analysis. 2) Chain of custody for the storage, handling, and examination of evidence. 3) Drug and alcohol testing. 4) Expert witness testimony. 5) Toxicology consults for workplace injury investigations. 6) Forensic breath analysis. 7) Forensic alcohol testing.

TRIAL SUPPORT SERVICES
ON THE RECORD, INC.
5777 West Century Boulevard, Suite 1415, Los Angeles, CA 90045, (310) 342-7170, fax (310) 342-7172, e-mail: ken@ontherecord.com. Contact Ken Kotarski. On The Record (OTR) is a high-ranking, full-service trial presentation and litigation support firm specializing in the preparation, setup, and presentation of fully integrated evidence presentation systems at trials as well as other dispute resolution proceedings. For nearly 20 years, On The Record has assisted thousands of attorneys nationwide and around the globe with the integration of documents, photographs, graphics, video, animation, and other exhibits into a clear and convincing computer-based courtroom presentation. From the conference room to the war room to the courtroom, OTR provides customized presentation support services and equipment configurations for any litigation communications challenge and venue. On The Record—The Trial Presentation Professionals. www.ontherecord.com. See display ad on page 55.

TRIAL PRESENTATION
ON THE RECORD, INC.
5777 West Century Boulevard, Suite 1415, Los Angeles, CA 90045, (310) 342-7170, fax (310) 342-7172, e-mail: ken@ontherecord.com. Contact Ken Kotarski. On The Record (OTR) is a high-ranking, full-service trial presentation and litigation support firm specializing in the preparation, setup, and presentation of fully integrated evidence presentation systems at trials as well as other dispute resolution proceedings. For nearly 20 years, On The Record has assisted thousands of attorneys nationwide and around the globe with the integration of documents, photographs, graphics, video, animation, and other exhibits into a clear and convincing computer-based courtroom presentation. From the conference room to the war room to the courtroom, OTR provides customized presentation support services and equipment configurations for any litigation communications challenge and venue. On The Record—The Trial Presentation Professionals. www.ontherecord.com. See display ad on page 55.

WASTEWATER
JOHN SHAW CONSULTING, LLC
Tel: (530) 550-1576, e-mail: john@shaweng.com. Website: www.shaweng.com. Contact John Shaw, PE. Water/wastewater/sewer industry—unique combination of operations and engineering background. Sanitary engineering including water (potable) and wastewater (industrial and domestic) treatment, conveyance, hydraulics, storage, reuse, master planning, operations, maintenance, and expert witness and forensic (mode of failure and standard of care analysis, engineering analysis, product suitability and construction defect issues). Wastewater treatment plants, disposal/reuse facilities, sewage lift station design, sewer collection systems, and sludge treatment. Water treatment plants, pipelines, and swimming pools.

WRONGFUL TERMINATION
HAIGHT CONSULTING
1726 Palisades Drive, Pacific Palisades, CA 90272, (310) 454-2986, fax (310) 454-4516. Contact Marcia Haight, SPHR—CA. Human resources expert knowledgeable in both federal and California law. Twenty-five years’ corporate human resources management experience plus over 20 years as a Human Resources Compliance Consultant in California. Specializations include sexual harassment, ADA/disability discrimination, other Title VII and FEHA discrimination and harassment, retaliation, FMLA/CFRA, safety, and wrongful termination. Courtroom testimony and deposition experience. Retained 60 percent by defense, 40 percent by plaintiff. Audit employer’s actions in preventing and resolving discrimination, harassment, and retaliation issues. Assess human resources policies and practices for soundness, for comparison to prevailing practices, and for compliance. Evaluate employer responsiveness to complaints and effectiveness of employer investigations. Assist counsel via preliminary case analysis, discovery strategy, examination of documents, and expert testimony.

TRAFFIC ENGINEERING
WILLIAM KUNZMAN, PE
1111 Town and Country #34, Orange, CA 92869, (714) 973-8838, fax (714) 973-8821, e-mail: bill@trafficengineer.com. Website: www.traffic-engineer.com. Contact William Kunzman, PE. Traffic expert witness since 1979, both defense and plaintiff. Auto, pedestrian, bicycle, and motorcycle accidents. Largest plaintiff verdicts: 1) $12,200,000 in pedestrian accident case against Caltrans, 2) $10,300,000 in case against Los Angeles Unified School District. Largest settlement: $2,000,000 solo vehicle accident case against Caltrans. Best defense verdicts: 1) $0 while defending Caltrans and opposition sought $16,000,000. 2) $0 defending City of Long Beach and opposition sought $15,000,000. Before becoming expert witness, employed by Los Angeles County Road Department, Riverside County Road Department, City of Irvine, and Federal Highway Administration. Knowledge of governmental agency procedures, design, geometry, signs, traffic controls, maintenance, and pedestrian protection barriers. Hundreds of cases. Undergraduate work—UCLA, graduate work—Yale University.
Opinion No. 527: Legal Advice and Assistance to Clients Who Propose to Engage or Are Engaged in the Cultivation, Distribution, or Consumption of Marijuana

**SUMMARY:** A member may advise and assist a client regarding compliance with California’s marijuana laws provided that the member does not advise the client to violate federal law or assist the client in violating federal law in a manner that would enable the client to evade arrest or prosecution for violation of the federal law. In advising and assisting a client to comply with California’s marijuana laws, a member must limit the scope of the member’s representation of the client to exclude any advice or assistance to violate federal law with impunity. In so doing, the member must advise the client regarding the violation of federal law and the potential penalties associated with a violation of federal law.


**INTRODUCTION**

This opinion addresses whether the State Bar Act and the California Rules of Professional Conduct prohibit a member of the California State Bar from counseling and assisting a client regarding compliance with California law, which creates immunities from California criminal statutes related to the cultivation, distribution, and consumption of marijuana in specified circumstances. Specifically, this opinion considers the following three questions:

1. Do the State Bar Act and the California Rules of Professional Conduct prohibit a member from advising a client on how to individually or collectively cultivate, distribute, and consume marijuana in a manner that would not constitute a crime under California law even though such conduct by the client would violate federal law?
2. Do the State Bar Act and the California Rules of Professional Conduct prohibit a member from drafting incorporation documents and incorporating a cooperative which would be engaged in collective cultivation of marijuana in a manner that would not constitute a crime under California law even though such conduct by the client would violate federal law?
3. Do the State Bar Act and the California Rules of Professional Conduct prohibit a member from advising and assisting a client already cultivating and distributing marijuana regarding taking actions that would result in the activity not constituting a crime under California law even though such conduct by the client would violate federal law?

It is the committee’s opinion that the answer to all of these questions is no, provided that the member does not advise the client to violate federal law or assist the client in violating federal law in a manner that would enable the client to evade arrest or prosecution for violation of the federal law. In advising and assisting a client to comply with California law concerning the cultivation, distribution, and consumption of marijuana, a member must limit the scope of the member’s representation of the client to exclude any advice or assistance to violate federal law with impunity. In so doing, the member must advise the client regarding the violation of federal law and the potential penalties associated with a violation of federal law.

The LACBA Professional Responsibility and Ethics Committee (PREC) prepares written opinions and responds to questions by lawyers concerning lawyers’ ethical duties and responsibilities. You may access PREC’s formal opinions through the LACBA’s website at http://www.lacba.org. Formal opinions are completed within six months to a year. If you have a legal ethics issue (not currently in litigation), please e-mail your inquiry, marked as confidential, to MSD@lacba.org.
member must advise the client regarding the violation of federal law and the potential penalties associated with a violation of federal law.

BACKGROUND

Both federal and California law criminalize the use, possession, cultivation, transportation, and furnishing of marijuana. However, California statutes create certain immunities from criminal prosecution under California law for the cultivation, distribution, and consumption of marijuana for medical purposes.

In 1996, California voters passed the Compassionate Use Act of 1996 (C UA) (Health & Safety Code §11362.5). This statute provides that state law proscriptions against possession and cultivation of marijuana do not apply to a patient or a patient’s designated caregiver who possesses or cultivates marijuana for the patient’s personal medical purposes upon the written or oral recommendation or approval of a physician. (Health & Safety Code §11362.5(d).)

In 2004, the California Legislature adopted the Medical Marijuana Program Act (MMPA) (Health & Safety Code §§11362.7 et seq.). The express intent of the MMPA was to: (1) clarify the scope of the application of the CUA and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers; (2) promote uniform and consistent application of the act among the counties within the state; and (3) enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects. (Qualified Patients Association et al. v. City of Anaheim, supra, 187 Cal. App. 4th at 748.)

The A.G. Guidelines’ stated purpose is to “(1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.” (A.G. Guidelines at 1.) Among other things, the A.G. Guidelines articulate requirements for the lawful operation of nonprofit cooperatives and collectives for the collective cultivation of medical marijuana by qualified patients, including that “[n]o business may call itself a ‘cooperative’ (or ‘co-op’) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code.” (A.G. Guidelines at 8.)

Thus, the CUA and MMPA, along with the A.G. Guidelines, specify a narrow set of circumstances under which someone may cultivate, distribute, and consume marijuana without committing a crime under California law. Someone who meets the requirements is not committing a California crime in connection with the activities covered by the statutes. At the same time, someone who fails to satisfy the requirements is likely committing a crime under California law and may be prosecuted. (See, e.g., People ex rel. City of Dana Point v. Holistic Health, 213 Cal. App. 4th 1016 (2013); People v. Solis, 217 Cal. App. 4th 51 (2013); People v. Jackson, 210 Cal. App. 4th 525 (2012).)

The CUA and the MMPA have no effect on the applicability of the federal Controlled Substances Act (CSA) in California. Under the CSA it is illegal to manufacture, distribute, or dispense a controlled substance, including marijuana (21 U.S.C. §841(a)(1)), or to conspire to do so. (21 U.S.C. §846.) It is also illegal under the CSA to possess marijuana, even for medical uses. (See 21 U.S.C. §§812, 844(a); Gonzales v. Raich, 545 U.S. 1, 26-29 (2005), 125 S. Ct. 2195; 162 L. Ed. 2d 1 (Gonzales); United States v. Oakland Cannabis Buyers’ Cooperative, 532 U.S. 483, 491-95 (2001), 121 S. Ct. 1711, 149 L. Ed. 2d 722 (Oakland Cannabis).) In Gonzales, the U.S. Supreme Court held that intrastate cultivation and use of marijuana under the CUA did not place the defendants in that case beyond the CSA’s reach, since Congress’s plenary commerce power extends to those activities. (Gonzales, supra, 545 U.S. at 17, 26-29, 125 S. Ct. 2195.) In Oakland Cannabis, the Court held the CSA did not authorize an implied defense to its penal provisions based on medical necessity, even where a state strictly controlled access to medical marijuana. (Oakland Cannabis, supra, 532 U.S. at 491, 121 S. Ct. 1711.) To the contrary, the terms of the CSA reflect Congress’s conclusion that marijuana serves no medical purpose. (Id.)

However, California courts have held that state and local agencies are not preempted by federal law and may carry out state law by allowing medical marijuana dispensaries that qualify for the immunities under state law. (Qualified Patients Association et al. v. City of Anaheim, supra, at 741-43; City of Garden Grove v. Superior Court, 157 Cal. App. 4th 355, 385 (2007); County of San Diego v. San Diego NORML, 165 Cal. App. 4th 798, 811, 818, 825-828 (2008).)

At this point in time, the federal CSA and California’s CUA and MMPA exist side by side and inherently conflict. The cultivation, distribution, and consumption of marijuana in accordance with California’s marijuana laws necessarily violate federal law to the contrary. As a result, someone may cultivate, distribute, and consume marijuana in a manner that avoids committing a crime under California law, but the same acts likely constitute a federal crime. Furthermore, a member’s representation of a client who is cultivating, distributing, or using marijuana in a manner that falls within the California law immunities may nevertheless violate a number of federal statutes, under which a member may also be prosecuted.

Whether and to what extent a member’s representation of a client in connection with legal advice concerning the cultivation, distribution, or use of marijuana would be a federal crime is beyond the committee’s purview. The committee notes that in October 2009 the U.S. Department of Justice (USDOJ) advised that it does not intend to use federal resources to prosecute under federal law.
patients and their caregivers who are in “clear and unambiguous compliance” with state medical-marijuana laws, except in cases involving broader issues of federal policy such as unlawful possession or use of a firearm, sales to minors, evidence of money-laundering activity, ties to other criminal enterprises, violence, or amounts of marijuana inconsistent with purported compliance with state or local law.\(^4\) Furthermore, the Commerce, Justice, Science and Related Agencies Appropriations Act for 2015 prohibits the use of federal funds in 2015 to prevent California, 16 other states, and the District of Columbia from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana. (H. Amend. 748 to H.R. 4660.)

While members may take some solace from the latest federal appropriations legislation for 2015 and USDJOI’s current position regarding prosecution, there is no guarantee that either will continue in the future.\(^5\) Because federal statutes of limitations may be five to ten years, depending on the violation, if federal authorities were to change their position with respect to enforcement, it is possible that members who assist clients in compliance with California marijuana laws today could be criminally prosecuted in the future.

**OVERVIEW OF APPLICABLE CALIFORNIA RULES**

This opinion focuses on whether the California Rules of Professional Conduct and the State Bar Act prohibit a member from advising a client regarding how to engage in the cultivation and distribution of marijuana in a manner that avoids engaging in a crime under California law, even though engaging in those acts violates federal law. It also addresses whether a member violates the California Rules of Professional Conduct and the State Bar Act by assisting a client in carrying out such advice, even though the client would be committing a federal crime.

There are two California provisions that address these questions. First, Rule of Professional Conduct 3-210 states:

> A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

Second, Business and Professions Code Section 6068(a) states that it is an attorney’s duty to “support the Constitution and laws of the United States and of this state.” California does not have a rule of professional conduct that specifically prohibits a lawyer from assisting a client in engaging in an action that the lawyer knows is a crime. Under Business and Professions Code Section 6106, “[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.” But as the California Supreme Court has observed, “discipline may be imposed only for criminal conduct having a logical relationship to an attorney’s fitness to practice, and [the] term ‘moral turpitude’ must be defined accordingly.” (In re Lesansky, 25 Cal. 4th 11, 14 (2001).) Providing legal advice regarding compliance with California law in a manner that is consistent with a lawyer’s professional responsibility would not reflect negatively on a lawyer’s fitness to practice law, and, therefore, without more, would not constitute moral turpitude.\(^6\)

By contrast, ABA Model Rule 1.2(d) states that a lawyer “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.”

While the Model Rule is comparable to Rule 3-210 in prohibiting a lawyer from advising a client to violate the law, there is no corresponding prohibition in Rule 3-210, or Section 6068(a), or elsewhere in the State Bar Act or the California Rules of Professional Conduct, on assisting a client in conduct that the lawyer knows is criminal. The issues under the applicable California rules are (i) whether advising a client regarding compliance with California law regarding cultivation, distribution, and use of marijuana is also advising a client to violate federal law, and (ii) whether advising or assisting a client in complying with California law regarding the cultivation, distribution, and use of marijuana, while supportive of California law, is nevertheless a violation of Section 6068(a) because it is not supportive of the laws of the United States.

Neither of these rules is clear on these questions. If Rule 3-210 is read literally, advising a client regarding how to avoid committing a crime under California law is not advising the client to violate federal law. However, the Rule does not directly address whether advice regarding compliance with state law is a violation of the rule if the advice would result in a violation of federal law when carried out by a client.

Ordinarily, under Section 6068(a), when compliance with California law can be accomplished in a manner that does not violate federal law, an attorney is required to advise and assist clients in a manner that supports both bodies of law. However, the inherent conflict between California and federal marijuana laws makes a literal application of Section 6068(a) problematic. An attorney who advises or assists a client to cultivate, distribute, and consume marijuana in a manner that would not constitute a crime under California law is supporting state law but is not supporting the laws of the United States. On the other hand, if an attorney maintains that the laws of the United States prevail over advising and assisting clients regarding compliance with California’s marijuana laws, the attorney is supporting the laws of the United States but is not supporting the laws of this state. A literal reading of the statute does not resolve this dilemma.

The answer to these questions becomes apparent when the Model Rules and the Restatement (Third) of the Law Governing Lawyers are consulted with respect to those aspects of the Model Rules and the Restatement that are consistent with the California rules. Both sources recognize that advice regarding compliance with the law does not violate the rules that prohibit advising violations of law, even if the client intends to use the advice to engage in a criminal act. Furthermore, the principles expressed in the Restatement indicate that a lawyer may assist a client in carrying out advice to avoid committing a crime under California’s marijuana laws, even though the client’s acts would violate federal criminal laws regarding marijuana.

The ABA Model Rules and the Restatement are not binding in California and have no legal force of their own. (City and County of San Francisco v. Cobra Solutions, 38 Cal. 4th 839, 852 (2006) (Cobra Solutions).) However, they may be considered as a collateral source, particularly in areas where there is no direct authority in California and there is no conflict with the public policy of California. (Cobra Solutions, supra, 38 Cal. 4th at 852; State Bar Formal Op. No. 1983-71; Cal. Rules of Prof. Cond. Rule 1-100(A).) Because the import of the comparable aspects of the Model Rules and the Restatement is the same as the applicable California requirements, they inform the committee’s understanding regarding how the California requirements should be applied to answer the questions presented. In addition, the comparable aspects of the Model Rules and Restatement reveal a policy that applies equally to the application of the California requirements to the questions presented.

**ANSWER TO QUESTION 1: ADVICE REGARDING COMPLIANCE WITH STATE LAW DOES NOT VIOLATE CALIFORNIA RULES**

Comment [9] to Model Rule 1.2 provides guidance as it relates to the limitations on advising a client expressed in California Rule
3-210. The comment states that the prohibition on counseling and assisting a client to commit a crime “does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client’s conduct.” The comment then states:

Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

Under the principles in Comment [9], advising a client about how to comply with California law so as not to commit a California crime is not prohibited as long as the lawyer is not also advising the client about how to commit a federal crime with impunity. The first sentence of the comment allows a lawyer to render that advice even if the client uses the advice to commit a federal crime. The second sentence makes the point that advising a client about the legal aspects of a questionable course of action is not a violation of the rule, while advising a client about how to commit a crime with impunity would be.

The Restatement also provides guidance. Section 94(2) of the Restatement states that “[f]or purposes of professional discipline, a lawyer may not counsel or assist a client in conduct that the lawyer knows to be criminal or fraudulent or in violation of a court order with the intent of facilitating or encouraging the conduct.”

The intent element in this section is an important qualification with respect to what is meant by counseling or assisting a client in conduct the lawyer knows to be criminal. Comment (a) defines these terms as follows: “Counseling” by a lawyer, within the meaning of the Section, means providing advice to the client about the legality of contemplated activities with the intent of facilitating or encouraging the client’s action. “Assisting” a client refers to providing, with a similar intent, other professional services, such as preparing documents, drafting correspondence, negotiating with a nonclient, or contacting a governmental agency. (Comment (a), para. 3.)

In the context of advising a client regarding how to avoid committing a California crime, the lawyer’s intent is to facilitate and encourage the client to act in a manner that complies with California law. A lawyer is not advising a client to violate federal law when the lawyer advises the client on how not to violate state law. A lawyer who intends to advise a client for that purpose acts properly under the Restatement.

The fact that the client may use the advice to commit a federal crime does not change the result. In explaining the rationale, the comment states: “That a client intends to commit a crime or fraud or violate a court order does not by itself preclude a lawyer from providing legal advice to the client concerning that conduct.” (Comment (c), para. 4.)

Neither the Model Rule nor the Restatement directly addresses the scenario presented by the conflict between state and federal marijuana laws. But both recognize that a lawyer may advise a client regarding compliance with a law even if a client uses or intends to use the advice to commit a crime. These principles support the proposition that a lawyer may advise a client who wants to know how to cultivate, distribute, and consume marijuana in California in a manner that would not constitute a California crime. That is true even if the client’s use of the advice results in a violation of federal marijuana laws.

While the wording of Rule 3-210 differs from both Model Rule 1.2(d) and Section 94(2) of the Restatement, the import of all of these rules with respect to advising a client is the same. For this reason, the committee believes that the foregoing principles in the Model Rule and the Restatement apply equally to the application of Rule 3-210.

As a result, it is the committee’s opinion that a member does not violate Rule 3-210 by advising a client regarding how to cultivate, distribute, and consume marijuana in a manner that would not constitute a crime under California law.

**ANSWER TO QUESTIONS 2 & 3: ASSISTANCE REGARDING COMPLIANCE WITH CALIFORNIA LAW DOES NOT VIOLATE CALIFORNIA RULES**

The next question is whether the State Bar Act and the California Rules of Professional Conduct allow a member to assist a client in implementing advice regarding the cultivation, distribution, and consumption of marijuana in a manner that does not constitute a criminal act under California law, even if the client’s conduct under California law would violate federal marijuana laws. Questions 2 and 3 posited in this opinion differ in terms of whether the member is assisting a client who intends to engage in such activities or whether a lawyer is assisting a client who is already engaged in such activities. However, in the committee’s opinion, the answers to these questions are the same.

In this regard, the comment to the Restatement, Section 94, is instructive. In explaining the rationale for the rule, the comment notes: Lawyers play an important public role by advising clients about law and the operation of the legal system and providing other assistance to clients. In counseling clients a lawyer may appropriately advise them about the legality of contemplated or past activities... Lawyers are occupationally engaged in advising clients about activities on which law has an often uncertain bearing. A lawyer who proceeds reasonably to advise a client with the intent of providing the client with legal advice on how to comply with the law does not act wrongfully, even if the client employs that advice for wrongful purposes or even if a tribunal later determines that the lawyer’s advice was incorrect. (Emphasis added.) With respect to assisting a client, the comment states:

A lawyer’s counseling or assisting a client in conduct that does not constitute a crime or fraud or violation of a court order is not subject to professional discipline under Subsection (2), even if the client or lawyer would be subject to other remedies, such as damages in a civil action by an injured third person. For example, it is not a disciplinary violation nor does it create liability to a third person (see §57, comment g) to prepare a document for a client that, when executed by the client, breaches contractual obligations of the client. (Emphasis added.)

While the comment does not specifically address the circumstances involved in this opinion, it does reflect a basic understanding about the role of lawyering, which the committee believes should inform an understanding of a member’s professional responsibility under Section 6068(a).
the client's acts would likely violate federal marijuana laws. So long as the member is not assisting a client in evading the prescriptions of federal law, that member is not acting in a manner that constitutes a failure to support federal law in violation of Section 6068(a).

The committee believes that this approach is consistent with the policy that underlies the applicable California rules. If a lawyer is permitted to advise a client on how to act in a manner that would not result in a California crime, the lawyer should be able to assist a client in carrying out that advice so the California crime does not occur—and a client should be able to receive such assistance from a lawyer.

An analysis that would conclude that a California client cannot obtain legal advice about how to comply with California law from a lawyer or that a client cannot obtain legal assistance in carrying out that advice disconnects the profession from its function—to assist clients in complying with the law, in this case California law. It would be a strange result indeed, if a client who wants to avoid committing a crime under California law cannot receive assistance from a lawyer.

In reaching this conclusion, the committee is mindful of the rules of statutory construction that state that a statute or regulation should not be interpreted to produce an absurd or unworkable result. (See, e.g., In re Eric J., 25 Cal. 3d 522, 537 (1979) “[W]here the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair, and harmonious with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.”); accord Wasatch Property Management v. Degrade, 35 Cal. 4th 1111, 1122 (2005).) The State Bar Act and the Rules of Professional Conduct are products of state law. The committee believes they should be reasonably interpreted in a way that provides consistency with the rest of California law of which they are a part.

Voters and the legislature enacted the CUA and the MMPA respectively. The legislature directed the attorney general to issue guidelines to implement those statutes. There is nothing in the statutes that suggests that either intended that the public should be deprived of the same degree of legal assistance in this one area of state law that is available to the public with respect to every other California statutory enactment. Nor is there anything in the statutes that suggests that either the voters or the legislature intended that the public would be denied any legal assistance in meeting all of the technical legal requirements that determine whether a marijuana operation is in compliance with California law or committing a crime under California law.

A construction of the State Bar Act or the California Rules of Professional Conduct that would result in either of the foregoing outcomes produces an absurd and unworkable result. Where there is a reasonable interpretation of the State Bar Act and the Rules that would avoid such results, the committee is obliged to adopt that construction.

The committee believes that both Rule 3-210 and Section 6068(a) should be applied in a manner that preserves the basic functionality of the legal profession, as just described. For that reason, it is the committee's opinion that neither Rule 3-210 nor Section 6068(a) prevents a member from assisting a client in carrying out advice regarding cultivation, distribution, and use of marijuana to avoid committing a crime under California law, even if the client would be or is committing a federal crime in undertaking those actions.10

ADVICE AND ASSISTANCE DIRECTED TO VIOLATING FEDERAL LAW IS NOT PERMITTED

While a member’s professional responsibilities under the Rules of Professional Conduct and the State Bar Act do not prevent a member from advising and assisting a client about cultivating, distributing, and consuming marijuana in a manner that does not constitute a crime under California law, they do not allow a member to advise a client to violate federal law or assist a client in violating federal law in a manner that evades detection or prosecution. Such advice and assistance would violate a member’s professional responsibility under both Rule 3-210 and Section 6068(a).

In this regard, a member advising a client regarding compliance with California law with respect to cultivation, distribution, and consumption of marijuana must limit the scope of the lawyer’s representation of the client to exclude any advice or assistance to violate federal law with impunity. In so doing, the member is required to advise the client regarding the violation of federal law and the potential penalties associated with the violations of federal law.

CONCLUSION

This opinion is limited to the unique circumstances that currently exist due to the inherent dichotomy between state and federal law with respect to the cultivation, distribution, and consumption of marijuana as described in this opinion. The committee recognizes that lawyers who advise and assist clients with respect to compliance with the CUA, MMPA, and Attorney General Guidelines are at risk of federal prosecution. That risk will continue until either the federal government or California changes their marijuana laws in a way that ends the dichotomy.

The committee believes the State Bar Act and California Rules of Professional Conduct should not compound the risk to the profession. Nor should they be applied in a manner that would preclude access to legal services needed to attain compliance with California’s marijuana laws, when there is a reasonable construction of the State Bar Act and the Rules of Professional Conduct that would avoid that result.

For the reasons set forth in this opinion, the committee concludes that a member does not violate the California Rules of Professional Conduct or the State Bar Act by (i) advising a client regarding how to cultivate, distribute, and consume marijuana in a manner that does not result in a crime under California law and (ii) assisting a client in implementing such advice, provided that the member does not advise the client to violate federal law or assist the client in violating federal law in a manner that would evade detection or prosecution or otherwise allow the client to evade detection or prosecution under federal law.11

This opinion is advisory only. The committee acts on specific questions submitted ex parte or generated by the committee, and its opinion is based on such facts as are set forth in the inquiry.

1 This is unlike more common scenarios where compliance with California laws can be accomplished in a manner that does not violate federal law. For example, a client can legally form a corporation in a wide range of circumstances that would not implicate federal law. However, a client cannot form a corporation for the purpose of taking actions that violate federal law. In such cases, a member’s assistance to the client, which would be permissible in other circumstances, may violate the State Bar Act and the Rules of Professional Conduct depending on factors and considerations that are beyond the scope of this opinion.

2 For example, a member who assists a client in setting up a marijuana operation in compliance with California law or in assisting a client in maintaining compliance with California’s marijuana laws may be engaging in federal criminal conspiracy in violation of 18 U.S.C. §371 (which would result in the member’s culpability for the wrongdoing of all others within the scope of the entire conspiracy), aiding and abetting the client in violation of 18 U.S.C. §2, and misprision of felony in violation of 18 U.S.C. §4 (concerning the knowing concealment of a felony and failure to inform law enforcement).

3 However, the committee believes that members should assume that cultivation, distribution, and consumption of marijuana in a manner that avoids committing a crime under California law is a federal crime until the member determines otherwise.


5 Some ethics opinions in other states have relied on the USDOJ’s position in concluding that advice and
assistance regarding compliance with state law allowing cultivation, distribution, or use of marijuana is permissible under those states’ rules of professional conduct. (See State Bar of Arizona Ethics Opinion 11-01; Washington State Bar Association Advisory Opinion 2232.) This opinion does not rely on the USDOJ’s advisory. The committee does not believe that determining a lawyer’s professional responsibility in these circumstances should depend on current prosecutorial or federal appropriation intentions.

A member’s oath on admission to practice is also not applicable. The oath is codified in Business and Professions Code §6067, which provides in relevant part that: “Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability.” (Emphasis added.) A member breaches the oath by failing to support either the United States or California constitution or by failing to discharge his or her duties as an attorney, which are not described in the oath. In this situation, those duties are stated in Rule 3-210 and Business and Professions Code §6068(a).

A member breaches the oath by failing to support either the United States or California constitution or by failing to discharge his or her duties as an attorney, which are not described in the oath. In this situation, those duties are stated in Rule 3-210 and Business and Professions Code §6068(a).

The committee does not believe that determining a lawyer’s professional responsibility in these circumstances should depend on current prosecutorial or federal appropriation intentions. The committee does not believe that determining a lawyer’s professional responsibility in these circumstances should depend on current prosecutorial or federal appropriation intentions.

A member’s oath on admission to practice is also not applicable. The oath is codified in Business and Professions Code §6067, which provides in relevant part that: “Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability.” (Emphasis added.) A member breaches the oath by failing to support either the United States or California constitution or by failing to discharge his or her duties as an attorney, which are not described in the oath. In this situation, those duties are stated in Rule 3-210 and Business and Professions Code §6068(a).

7 For example, Preamble [14] to the ABA Model Rules of Professional Conduct states, “The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself.”

The same concepts have been applied in ethics opinions in other states concerning marijuana to the same effect. (State Bar of Arizona in Arizona Ethics Op. 11-01 (Feb. 2011) (“Legal services are necessary or desirable to implement and bring to fruition that conduct expressly permitted under state law. In any potential conflict between state and federal authority, such as may be presented by the interplay between the Act and federal law, lawyers have a critical role to perform in the activities that will lead to the proper resolution of the controversy.”); Illinois State Bar Professional Conduct Advisory Op. No. 14-07 (Oct. 2014) (“The committee believes that it is reasonable to permit Illinois lawyers, whose expertise in draftsmanship and negotiations is of great value to the public, to provide the same services to medical marijuana clients that they provide to other businesses. One of the purposes of legal representation is to enable clients to engage in legally regulated businesses efficiently, and that purpose is advanced by their retention of counsel to handle matters that require legal expertise. A lawyer who concludes that a client’s conduct complies with state law in a manner consistent with the application of federal criminal law may provide ancillary services to assure that the client continues to do so.”)

8 While this opinion does not address whether the same result would obtain under Model Rule 1.2(d), the committee notes that assistance that is intended to allow a client to act in a manner that does not violate state law may not violate the Model Rule.

9 This opinion is limited to the professional responsibility of a member of the California State Bar representing a client in California with respect to the cultivation, distribution, and consumption of marijuana in California under California law. The California Rules of Professional Conduct do not authorize a member to perform functions in other states except as otherwise permitted by law. (Cal. Rules of Prof. Cond. 1-100(D). The laws and applicable professional standards outside of California are different and a member advising and assisting clients located outside of California or with respect to activities that will occur outside of California are subject to the specific requirements of those jurisdictions. (Id.)
14th Annual Environmental Law Fall Symposium

ON FRIDAY, NOVEMBER 6, the Environmental Law Section will host the 14th Annual Environmental Law Fall Symposium, featuring panels on air and toxics, water, and environmental contamination. The lunch keynote speaker will be Jeffrey Kightlinger, general manager of the Metropolitan Water District of Southern California. There will be a reception following the symposium. The symposium will take place at the InterContinental Los Angeles Century City, 2151 Avenue of the Stars. On-site registration will begin at 11:30 A.M., with the program continuing from noon to 4:30 P.M. The registration code number is 012656.

$125—CLE+ member
$205—Environmental Law Section member
$205—Real Property Section member
$240—LACBA member
$260—all others
4 CLE hours

TAP: Deposition Skills Workshop

ON WEDNESDAY, NOVEMBER 11, Trial Advocacy and the Litigation Section will host a workshop providing introductory and intermediate instruction on how to take and defend depositions in California state court actions. The first part of the program will be a lecture with questions and answers covering the rules relating to oral depositions, how to pin down the deponent, how to defend a deposition, the use of deposition testimony in trial, and developing a deposition strategy. The second part is a workshop in which participants practice taking and defending the deposition of a plaintiff in a civil action for negligence and receive constructive feedback on their performance. Participants receive a deposition outline that they can use to take and defend a deposition. The outline organizes the deposition process into a user-friendly format. Written course materials will be distributed via e-mail prior to the first class, so a correct e-mail address at the time of registration is needed. The program will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown. Parking is available at 1055 West 7th and nearby lots. On-site registration will begin at 1 P.M., with the program continuing from 1:30 to 5:30 P.M. each day. The registration code number is 012447.

$250—CLE+ member
$350—LACBA member
$500—all others
3.75 CLE hours

Advanced Mediation Skill Practicum

ON NOVEMBER 16, 17, and 18, the Center for Civic Mediation will host a program offering extensive practice and coaching in advanced mediation skills. Those who attend will receive nine hours of lecture and nine hours of role-playing, observation, coaching, and feedback. Lecture topics include assessing the conflict, consensus building, problem-solving, managing multiparty agendas, legal ethics, distributive and integrative bargaining, and using case studies from a range of areas of law (e.g. personal injury, employment, contracts, real estate, and property). The advanced practicum aims to develop more advanced skill sets for practitioners as well as an understanding of key elements, principles, and strategies in mediation. Prior mediation training is required for this course, which will take place at the Los Angeles County Bar Association, 1055 West 7th Street, 27th floor, Downtown.

Parking is available at 1055 West 7th and nearby lots. On-site registration will begin at 8:30 A.M., with the program continuing from 9 A.M. to 4 P.M. each day. The registration code number is 012726.

$435—Center for Civic Mediation associates
$465—LACBA member
$515—general price
18 CLE hours, including 3 hours of ethics and 1 hour elimination of bias

The Los Angeles County Bar Association is a State Bar of California MCLE approved provider. To register for the programs listed on this page, please call the Member Service Department at (213) 896-6560 or visit the LACBA website at http://calendar.lacba.org, where you will find a full listing of this month’s LACBA programs.
The goal is to get each side to understand how the other sees the issues, and the degree of reasonableness therein.

 IF THE ONLY TOOL YOU HAVE IS A HAMMER, the tendency is to treat every task as a nail. Instead of addressing mediation like a hammer-wielding Thor, litigators can increase the likelihood of success and client satisfaction by thinking and acting more like transaction lawyers. Litigators typically approach mediation as an advocacy event, arguing the strength of their case and the weakness of their opponent’s. This fits the evaluative style of mediation in which the mediator focuses on legal issues and the uncertainties and cost of litigation to achieve a compromise, often with the stated goal of leaving parties equally unhappy. While this approach often works, clients tend to be neither integral to the discussions nor satisfied with the result. There is another way. A transactional approach to mediation involves: identifying the differing viewpoints, interests, and needs of the parties; finding the settlement ballpark and deal points needed to settle; defusing perceived fairness issues; and conducting the exchange of offers and counteroffers in a choreographed manner.

Cases come to mediation on the wings of competing viewpoints. Clarifying those viewpoints—with explanations and evidence—facilitates making a deal. Lawyers should use the mediator to gain and communicate information useful to clarifying viewpoints rather than trying to turn the mediator into a super advocate. The goal is to get each side to understand how the other sees the issues, and the degree of reasonableness therein. This applies equally to damages cases, including personal injury and employment, in which clarifying viewpoints can drive settlement value.

Each lawyer should imagine how the other side views the case and how to show them the viability of opposing views. Key documents and expert reports should be available at the mediation. Even if shown only to the mediator in confidence, they enable the mediator to clarify viewpoints. Clients can directly understand and participate in discussions of differing viewpoints—especially as to what happened and the consequences. This approach leads to a more durable result, as compared with lawyer and mediator discussions focused on legal positions, in which the client simply defers to the lawyer.

Limited joint sessions can be used so the other side gets to experience the impact of evidence, for example how a party will present at trial. This is particularly useful when a decision maker, such as an adjuster or in-house counsel, was not directly involved in the underlying events.

In a premediation client conference each lawyer needs to determine:

- Interests that reflect what each of the parties wants.
- Needs that are what each party must have to settle.
- A ballpark monetary range within which to settle the case.
- A reservation price that for a plaintiff is the lowest amount required to settle; for a defendant, the highest amount that will be paid. The reservation price should be adjustable based on what is learned at the mediation.

This conference should begin with instruction that mediation is not about adjudication; it is a highly impersonal negotiation, based on competing viewpoints, in which the plaintiff is selling and the defendant is buying. Competing perceptions of fairness, however, are often detrimental to negotiations. This should be explained at the client conference. While most disputes are couched in terms of material interests, perceived fairness issues can lead otherwise sophisticated parties to take positions that are contrary to those interests.

Time is often spent at mediation airing fairness issues in order to allow the material negotiation to progress. Trial lawyers are predisposed to emphasizing fairness issues, as that is what often sells to a jury, but it is counterproductive to the mediation process. Defusing fairness issues in advance reduces their impact on the mediation process. Having this conference well before the mediation provides the confidence of considered positions that have been “slept on,” increases the client’s connection to the process, and decreases the likelihood of clients’ having buyer’s or seller’s remorse.

Lawyers should condense their clients’ interests and needs to discrete deal points prior to the mediation. With these points in mind, counsel should confer prior to the mediation on a draft settlement agreement in order to establish cooperation and arrive at a long-form agreement. If cooperation is not obtainable, a draft settlement agreement should still be prepared in advance. Doing so avoids the peril of leaving drafting to the end of a long day in mediation or ending up with a generic short form and hoping problems do not arise when drafting a long form after the mediation session.

As with any negotiation, anticipating the flow of offers and counteroffers at mediation increases the likelihood of presenting numbers that encourage the other side to continue to negotiate and decreases the likelihood of being stymied in the process. It also helps to prevent the numbers from getting away from you by, for example, making moves that are disproportionate to what the other side is doing, in a way that undercuts the credibility of your (undisclosed) reservation price.

Underlying all of this is the lawyer’s intention to shift from conflict and advocacy to problem solving and deal making. Consciously reaffirming this intention as the mediation progresses minimizes getting sidetracked and keeps the focus on getting the deal done.

Mark Fingerman and Ralph Williams are commercial mediators at ADR Services in Los Angeles.
Helping law firms get paid.

It is critical for attorneys to handle credit card transactions correctly. IOLTA guidelines and the ABA Rules of Professional Conduct require attorneys to ethically accept credit cards. LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your transactions are always handled the right way.

www.LawPay.com/lacba  |  866.376.0950

Affinipay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL
Clients don’t care about …almost… winning

The financial advisor you use can affect the ultimate result.

We deliver better results through:

△ Investigative capabilities that discover hidden evidence
△ Experience-directed research and analysis that delivers right answers the first time
△ Depth of professional resources to deliver on near-term deadlines
△ Technology that provides responsive, cost-effective answers
△ Persuasive visual presentations which follow our proven methodology

Because of this, we have an unequalled track record in successful court testimonies and substantial client recoveries.

Call us when you need analysis or expert testimony regarding:

△ Commercial damages
△ Bankruptcy & restructuring analysis
△ Business & asset valuations
△ Injury & employment damages
△ Economic & market studies
△ Fraud & other investigations
△ Forensic accounting & audits
△ Statistics & econometric modeling

Fulcrum Inquiry

To avoid mistakes, follow the online advice at www.fulcrum.com, or call us at 213-787-4100 for a free consultation.