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Sea Changes

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the most basic legal issues or concepts can be confusing to litigants who are unfamiliar with the legal system. This slows down the legal process for everyone and can be a barrier to reaching a just result in any given case.

Pro bono legal services are one way to reduce the number of unrepresented parties who cannot afford a lawyer. However, clients of limited means do not always qualify for pro bono services, and even so, there is not enough free legal aid to go around. A new trend is to provide legal representation through alternative arrangements and programs that are affordable to clients of limited means.

One new practice to meet the needs of litigants of limited means is called limited scope representation, also called “unbundled” or “discrete task” representation, in which attorneys provide specific legal assistance for a limited aspect or issue in a case, such as preparing forms or appearing in court for a particular hearing. Limited scope representation provides legal services to clients of limited means who cannot afford full representation but who would greatly benefit from legal counsel on specific aspects of the case. Cases best suited for limited scope representation include family law cases, which tend to involve a high number of litigants with limited means.

LACBA’s Lawyer Referral Service (LRS) is promoting limited scope representation through an advertising campaign and information posted on its website. LRS is the first lawyer referral service in the United States to provide legal referrals and free legal information to more than 100,000 people each year. Under the leadership of director Seth Chavez, LRS is taking creative steps and supporting new initiatives to serve its members and expand access to justice in Los Angeles County. These initiatives are in consultation with LACBA’s Access to Justice Committee, whose mission is to expand the delivery of legal services to the poor in Los Angeles County.

In addition to promoting limited scope representation, LRS has also created a new limited experience panel, which is an incubator project that allows less experienced lawyers to receive client referrals. Panel members will be matched with limited means clients who are litigating basic legal issues. The limited experience panel will give new lawyers an opportunity to gain experience, while also providing greater access to legal representation for those of limited means. A win for new lawyers seeking experience and work, and a win for pro se litigants who are lost in the mire of litigation.

In April, LRS is also planning to launch a flat fee program that will allow clients to pay an affordable lump sum amount for discrete legal tasks, such as filing for a simple divorce, trademark filings, or forming basic corporate entities. LRS plans to add additional tasks as the program grows.

These initiatives benefit everyone in the legal process—the litigants of limited means who otherwise could not afford representation, the new attorneys who are given the opportunity to broaden their experience and client base, and the courts by making the court process run more efficiently. And of course, win or lose, the end result is justice for every litigant.
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Victor D. Nieblas Immigration Attorney

People support the concept of diversity, but it's completely different when they have to implement it. That doesn't come as easily.

Is American immigration law and policy fair? No. If we look at immigration law and policy across our history, all we have to do is look at our fears—the Red Scare, the Cold War, the “invasion” of Chinese immigrants. That translates into immigration law and policy.

If you could wave a magic wand over Congress, what kind of legislation would you want passed? One form of legislation would not cure the situation. Our economy has new demands, our families have new demands, and our businesses have new demands. That is why we call it comprehensive reform, not piecemeal.

Do you think this will be accomplished? We can't be afraid to embrace the differences that make us strong. We are a brave country.

What is the easiest way to immigrate? Some say the easiest way is to bring in a worker through a work visa and then be able to petition for a visa down the line.

The K-1 (fiancée) visa allowed Tashfeen Malik to immigrate and later shoot up the regional center in San Bernardino with her husband. Are those visas too easy to get? I don't think so. There is an extensive vetting process and a personal interview. It can take up to 18 months. Is it perfect? I don’t think anything is perfect. You can’t read minds.

You went to Loyola Law School and are now an adjunct professor there. What advice do you give your students? Whatever you do, do it ethically. You only have one bar card and one reputation. Don’t sell it, and don’t let it go to waste.

You have been a guest legal commentator on local broadcasts. Who is your audience? I started working with the media in 1997. I used radio as a tool to inform the Spanish-speaking community, and the closing saying was “An uninformed community is an unarmed community.”

Did you later reach a different audience? On television, Inmigración 411 was across the nation. Immigration is federal law; it should be applied equally in all states.

Is it? No, not on the enforcement side.

How do you manage it all—the media, your practice, teaching, and being president of AILA? I am also a husband and father. That should be my number one job. I can’t do this without my wife.

Mexicans naturalize at a lower rate than immigrants from other countries. Why? Language, money, and the thought that, someday, I’m going back.

Should a fence be built on the border? No, it’s a silly concept. The net immigration for Mexicans is zero.

Is the U.S.A. the prime destination for immigrants? From the business perspective, it’s Canada. They are extending their arms to bring in investors.

What was your best job? My newspaper route when I was young. It taught me responsibility and that I had to be on time.

What was your worst job? My hardest job was during high school. I had to clean up the gym and the locker rooms at 5 A.M. I didn’t mind doing the work, but I minded waking up.

What characteristic do you most admire in your mother? She was the backbone of our family. She got things done and she made sure we got things done.

If you were handed $10 million tomorrow, what would you do with it? Make sure that I have taken care of my children’s college funds and give back to the community that produced me.

Who is on your music playlist? I’m all over the place—eighties music, some hip-hop, Mexican folk songs, and classical. When I’m in my car, going to a difficult hearing, I’ll play old-school breakdancing music.
Which magazine do you pick up at the doctor’s office? I bring my Los Angeles Times. I read La Opinion online.

Did the U.S.A. do right by the recent unaccompanied minors? No.

Has America lost its heart and history as to immigrants? When it comes to families, yes.

Are you disappointed with President Obama? The AILA published a report card on him. On family detention, we failed him.

What is your favorite vacation spot? My parents’ home in Calexico, California. The house was two blocks from the border patrol and eight blocks from the international border. It’s where I grew up.

What do you do on a three-day weekend? I go to Yosemite Valley to appreciate what nature has given.

What is your favorite hobby? Baseball. I’m a Dodger fan, but I can watch a great little league game. I used to play shortstop or second base; I was the short guy, but I was the fast guy.

If your house were on fire and you were running out the front door, what would you take with you? My family.

Which television shows do you record? I’m a big sci-fi fan. Anything that shows a better future.

How do you get your news? I am an internet junkie.

Which app do you wish you could operate on your smartphone? That assumes that I don’t know how to operate it.

If you had to choose only one dessert for the rest of your life, what would it be? Mexican candy—tamarindo.

Which person in history would you like to take out for a beer? César Chávez. I met him in college and talked to him. The lesson that I got is that you can be humble and still be a potent leader.

What are the three most deplorable conditions in the world? Relationships between human beings—we just don’t get along. When are we going to reach common ground? Hunger. Race relations.

Who are your two favorite U.S. presidents? John F. Kennedy—he was the first Catholic president. Abe Lincoln because of slavery.

What is the one word you would like on your tombstone? Justice.
The disentitlement doctrine is a somewhat obscure, yet powerful, rule of procedure that gives a reviewing court the power to dismiss the appeal of a party who is in violation of a court order. The doctrine originated with criminal defendants who became fugitives after being found guilty and during the pendency of their appeal. One often-cited case summarizes the doctrine as one that prevents "heads I win, tails you'll never find me" situations in criminal cases. The doctrine, however, applies equally to civil cases. Recent California case law confirms that this doctrine remains alive and well in California and is an available remedy for a respondent confronted with an adversary who flouts court orders.

The doctrine was discussed in a 2006 article in Los Angeles Lawyer. As indicated there, the basic outlines of the doctrine are that an appellate court has inherent power to dismiss an appeal by a party that has violated a lower court order. The doctrine is discretionary, not jurisdictional, and is "not a penalty for criminal contempt," but is instead an "exercise of a state court’s inherent power to use its processes to induce compliance with a presumpitively valid order." The California Supreme Court held many years ago that the doctrine applies because a "party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his demands while he stands in an attitude of contempt to legal orders and processes of the courts of this state." In California state courts, unlike federal court, a formal finding of contempt is not required for the doctrine to apply. In the civil context, the doctrine has been routinely applied in cases in which "an appellant is a judgment debtor who acts to frustrate or obstruct legitimate efforts in a trial court to enforce a judgment." Thus, for example, the doctrine has been applied to dismiss an appeal by a party who refused to comply with a trial court’s postjudgment discovery orders or when the party has refused to appear for a judgment debtor examination.

Under California law, the disentitlement doctrine can be raised by a motion in the appellate court. Thus, the moving party is permitted, indeed perhaps required, to submit evidence supporting the motion. Because of this requirement and the nature of the doctrine—which by definition involves a factual inquiry into postjudgment or postorder conduct by the appellant—the moving party is permitted to put before the appellate court evidence that postdates the filing of the notice of appeal. This is an exception to the general rule that an appellate court will not consider matters occurring after the filing of a notice of appeal.

The 2006 article in Los Angeles Lawyer noted the lack of "greater use of the doctrine" in California and that "[f]ew published cases have discussed the doctrine, suggesting that it is not used as extensively as it could be." However, since 2006 several published California opinions have addressed and applied the doctrine.

For example, in Stoltenberg v. Ampton Investments, Inc., Division Five of the Second Appellate District expanded the doctrine, holding it applicable even when the court order that was violated was not issued by the trial court in the pending action or indeed by a California court at all. The plaintiff in Stoltenberg obtained a judgment against the defendant in a California trial court. The defendant appealed but did not post a bond in order to stay enforcement of the judgment pending appeal. The plaintiff then registered the California judgment in New York and sought to enforce it there by serving a subpoena seeking financial information. The defendant did not comply with the subpoena or with an order of a New York court compelling it to respond to the subpoena. The plaintiff successfully moved to dismiss the California appeal under the disentitlement doctrine.

The Stoltenberg court held that the disentitlement doctrine applied, even though the defendant had violated an order issued by a New York court rather than the order on appeal. Relying on federal authorities, the court concluded that the doctrine is not limited to violations of orders issued by California courts. "For purposes of the disentitlement doctrine, there is no meaningful distinction between New York trial court orders and California trial court orders related to enforcement of a California judgment." The court also reiterated prior case law holding that appellants cannot argue they were entitled to disobey the court’s order because of the merits of their appeal. "This is the worst kind of bootstrapping. A trial court’s judgment and orders, all of them, are presumptively valid and must be obeyed and enforced....They are not to be frustrated by litigants except by legally provided methods."

Stoltenberg was followed by the Fifth Appellate District in Gwartz v. Weilert. In Gwartz, after the plaintiffs were unsuccessful in collecting a $1.5 million judgment, they obtained various enforcement orders that enjoined the defendants from, among other things, trans-
During the appeal, the defendants violated the enforcement orders by making 47 different transfers of money. The plaintiffs moved to dismiss the appeal under the disentitlement doctrine. The defendants opposed the motion but did not dispute that the transfers had taken place. The Fifth District granted the motion, holding the disentitlement doctrine presented a “threshold question that must be decided before reaching the merits of the appeal.” The court held dismissal of the appeal was appropriate, citing numerous authorities that the doctrine should be applied when “an appellant is a judgment debtor who has frustrated or obstructed legitimate efforts to enforce a judgment.” The court relied in large part on the appellants’ opposition to the dismissal motion, which “did not deny the transfers listed in the motion occurred and did not explain how those transfers might have been permissible under the trial court’s orders.”

The Gwartz case also indicated that the dismissal of an appeal under the disentitlement doctrine constitutes a decision that “determine[s] a cause,” and hence requires a written opinion from the appellate court under Article VI, Section 14 of the California Constitution. In this regard, Gwartz arguably made new law because other panels of the court of appeals have summarily dismissed appeals under the disentitlement doctrine without a written opinion. Another panel recently dismissed an appeal under the disentitlement doctrine in a rare per curiam opinion (not identifying the author of the opinion) without oral argument. In federal court, the Ninth Circuit applied the disentitlement doctrine in a very perfunctory unpublished memorandum decision.

Stoltenberg and Gwartz were both followed by Division Three of the Fourth Appellate District in Blumberg v. Minthorne. Blumberg involved a dispute over the administration of a family trust. The trial court ruled in favor of the plaintiff, and the defendant appealed. The trial court issued two orders, which were not stayed by the appeal and which the defendant disobeyed. The first order was to file an accounting. The second was to convey title to the property in dispute. Instead of complying with the trial court’s order to quitclaim the property to the plaintiff, the defendant instead quitclaimed the property to her daughter on the same date she responded to an order to show cause without mentioning the conveyance. The court of appeal found the defendant’s conduct was “to put it bluntly, despicable.” The court stated application of the disentitlement doctrine was “rare,” but concluded that this was one case in which the application of the doctrine was appropriate due to the defendant’s “flagrant violation of the [trial] court’s orders.”

Most recently, Division Eight of the Second Appellate District applied the disentitlement doctrine in Ironridge Global IV, Ltd. v. ScripsAmerica, Inc. In Ironridge, the parties had settled a breach of contract action through a stipulated settlement that required the defendant corporation to issue shares of its stock to the plaintiff. The defendant breached the stipulated settlement, causing the plaintiff to move for relief under Section 664.6 of the California Code of Civil Procedure, which gives a trial court jurisdiction to enforce a settlement agreement. The trial court agreed with the defendant and issued an order 1) requiring the defendant to issue 1.6 million shares to the plaintiff and 2) enjoining the plaintiff from issuing shares to any third parties until it issued the 1.6 million shares to the plaintiff. The defendant appealed but during the pendency of the appeal issued 8.7 million shares to third parties.

The court of appeal dismissed the appeal under the disentitlement doctrine. The court noted that while the mandatory portion of the trial court’s injunction (requiring issuance of the 1.6 million shares) may have been stayed by the filing of an appeal, the prohibitory portion of the order (enjoining the defendant from issuing shares to any third parties) was not. The court held that application of the disentitlement doctrine was
is to seek a stay either in the trial court or a writ issued by the trial court, as in Stoltenberg. The doctrine when it is undisputed that the violation was justified because the trial court’s order was “invalid.” The court of appeal rejected this argument because “arguments as to the merits are irrelevant to the application of the disentitlement doctrine.”

So long as the trial court had jurisdiction to issue the order, the order is presumed valid until set aside, and a party cannot disobey the order and simply claim that it was erroneous. A party’s remedy in that situation is to seek a stay either in the trial court or the court of appeal. The court concluded that a balance of equities favored dismissal of the appeal because the defendant “had no cause to disobey the court’s order, but did so, repeatedly.”

The foregoing recent cases demonstrate that the disentitlement doctrine remains an available remedy under California law that can be applied in a variety of contexts. Respondents on appeal should consider invoking the doctrine when it is undisputed that the appellant has violated an equitable order issued by the trial court, as in Gwartz, Blumberg, and Ironridge. However, the doctrine is equally available when the appellant is a judgment debtor who does not post an appellate bond to stay enforcement of the judgment and is frustrating collection efforts, as happened in Stoltenberg.

For appellants, the lesson from these cases is simple: obey trial court orders unless and until a stay is obtained. An appellant who violates a court order that is not stayed runs the risk of forfeiting the right to appeal, regardless of the appeal’s merits.

1 Antonio-Martinez v. Immigration & Naturalization Serv., 317 F. 3d 1089, 1093 (9th Cir. 2003).
5 Id. at 1230 (internal quotation marks omitted).
6 MacPherson v. MacPherson, 13 Cal. 2d 271, 277 (1939).
7 TMS, Inc. v. Ahara, 71 Cal. App. 4th 377, 379 (1999) (“No judgment of contempt is required as a prerequisite to our exercising the power to dismiss”); Tashman, supra note 3, at 46 (discussing a federal requirement that a bench warrant be issued for the appellant).
8 Stoltenberg, 215 Cal. App. 4th at 1230-31 (collecting and discussing cases).
12 Rule 8.54(a)(2) of the California Rules of Court requires that appellate motions must be supported by “declarations or other supporting evidence” if not based on matters contained in the appellate record.
13 “[M]atters that occurred after rendition of an appealed judgment usually will be disregarded on appeal; i.e., parties cannot challenge an appealed judgment based on postjudgment occurrences.” EISENBERG, HORVITZ & WINNER, CALIFORNIA PRACTICE GUIDE: CIVIL APPEALS & WRITS §8.176 (2015) (emphasis in original) [hereinafter EISENBERG]. There are several exceptions to this rule. Id. §§8.180-8.187.10.
14 Tashman, supra note 3, at 46.
16 Id. at 1227. Under California law, an appellant is generally required to post a bond for 150 percent of the amount of a money judgment to stay the judgment pending appeal. CODE CIV. PROC. §517.1(a)(1). Absent a stay, a monetary judgment is immediately enforceable upon entry. CODE CIV. PROC. §683.010.
18 Id.
19 Id. at 1234.
20 Id. at 1233.
21 Id. at 1234.
22 Id. at 1231 (citing Stone v. Bach, 80 Cal. App. 3d 442, 448 (1978)).
24 Id. at 751-52.
25 Id. at 752.
26 Id.
27 Id. at 758.
28 Id. at 761.
29 Id. at 757.
32 See United States v. Yellow, 613 Fed. App’x 667 (9th Cir. 2015) (order of dismissal).
34 Id. at 1386.
35 Id. at 1391.
36 Id. at 1391-92.
37 Id. at 1386.
38 Id. at 1386.
40 Id. at 261.
41 Id. at 262-63.
42 Id. at 264.
43 Id. at 265.
44 Id. at 265 n.4 (citing Okaver v. Fenech, 206 Cal. App. 118, 123 (1928) (“An injunction may grant both prohibitive and mandatory relief, and when it is of this dual character, and an appeal is taken, such appeal will not stay the prohibitive features of the injunction, but as to its mandatory provisions said injunctions will be stayed”).
46 Ironridge, 238 Cal. App. 4th at 266.
47 Id.
48 Id. at 267.
49 Id. at 267-68.
50 Id.
Applying Lydig to the Requirements for Requesting a Writ of Attachment

ONCE A PARTY TO A CONTRACT breaches by failing to provide payment, any creditor looking to recover will likely have strong concerns regarding whether the debtor has or will have sufficient assets available to satisfy any money judgment rendered against it. Creditors without collateral for a debt want to protect their interests during the long delay before trial and ensure that they can collect on any potential judgment. One way is through writ of attachment, and in a recent case of first impression, Lydig Construction, Inc. v. Martinez Steel Corporation, the appellate court discussed requirements for obtaining and, more specifically, offsetting or reducing a party’s request for a writ of attachment.

In the commercial and business setting, in which labor, services, and material transactions are generally not secured by collateral, the creditor’s only recourse is to engage in civil litigation and obtain a court judgment. A creditor in these circumstances may be looking for alternate ways to obtain legitimate leverage. Also, if the debtor has breached multiple agreements, other parties may have liens placed on the debtor’s property before the creditor even makes it to trial, let alone obtains a judgment. An unsecured creditor subordinated to priority liens then runs the risk that any judgment obtained will be essentially worthless. There are, however, provisional remedies available to protect unsecured commercial creditors allowing them to secure the debtors’ property before a money judgment is issued, or even before trial proceedings commence. While a collection action is pending, provisional or prejudgment remedies prevent debtors from conveying, encumbering, or hiding assets that could be used to satisfy a judgment. A writ of attachment is an example of a provisional remedy that permits an unsecured creditor to obtain a judicial lien on the debtor’s property before final adjudication of the creditor’s claims. Unless released or discharged, the attachment lien remains in force, and the property remains levied for three years from the date of the issuance of the writ of attachment. The attachment period may be extended by one year from the expiration date upon motion by the plaintiff, but the maximum period of attachment, including extensions, is eight years from the date of issuance of the writ of attachment.

In Lydig the defendant Martinez Steel Corporation challenged the application of the plaintiff Lydig Construction, Inc., for writ of attachment. The defendant did so by making a factually unsupported cross-claim for an amount greater than that of Lydig’s writ of attachment claim. Martinez argued that when its offsetting claim was taken into account, the amount to be secured by Lydig’s attachment was less than zero, and, as a result, Lydig had failed to establish the probable validity of its claim—a requirement for obtaining a writ of attachment. Martinez’s opposition to the writ application was supported by one declaration. In a victory for the creditors, Lydig held that bogus cross-claims do not defeat writs of attachment.

Although the case arose in the construction context, its outcome is broadly applicable to all business and commercial disputes involving unsecured creditors in comparable circumstances. The decision in Lydig is an important confirmation of the statutory intent and requirements for obtaining an offset to the amount sought by a writ of attachment.

Writs of Attachment

With a writ of attachment the creditor lacking collateral on the debt can become secured and gain priority over other potential creditors, thus preserving and ensuring an enforceable judgment. A subsequent judgment relates back to the date of the attachment. For example, in Lydig, Lydig served as the general contractor on a public works project to expand San Bernardino County’s Adelanto Detention Center. Lydig’s project bid was partly based on the bid provided by defendant Martinez, a rebar (steel) subcontractor. Subsequent to being awarded the project, Lydig entered into a subcontract with Martinez under terms that required Martinez to provide a faithful performance bond and payment bond to Lydig. Martinez was unable to provide such bonds and was in material default under the terms of the subcontract. However, rather than terminate Martinez’s performance of the subcontract, Lydig agreed to accept a personal guaranty from Martinez’s owner, which unconditionally guaranteed the payment and performance of all liabilities and obligations of Martinez arising under the subcontract.

During the course of the construction project, Lydig learned that Martinez was on a cash-only basis with its steel mill supplier and had become financially unable to facilitate the purchase of materials required under the subcontract with Lydig. Lydig was forced to purchase raw steel materials directly from the steel mill, and then ship the materials to Martinez to be fabricated, delivered, and installed on the project. Eventually, Lydig came to believe that Martinez had wrongfully diverted materials purchased and shipped to Martinez by Lydig to other projects, which forced Lydig to obtain replacement rebar from other sources. Martinez and its owner continued to breach both the subcontract and the personal guaranty by failing to procure and provide materials required under the subcontract and by failing to properly staff the project. Lydig submitted a formal subcontractor substitution request to San Bernardino County, and after holding a substitution hearing, the county consented to Lydig’s request. As a result of Martinez’s breach, Lydig incurred damages of over $200,000 completing the subcontract work. Lydig filed a complaint against Martinez and its owner for breach of contract, and subsequently filed an application for a right to attach order and writs of attachment in order to secure the debt owed pursuant...
to the subcontract and guaranty, and to preserve an enforceable potential judgment.10

Seeking or obtaining a writ of attachment can also promote settlement. An applicant’s successful demonstration of a prima facie claim and success at the hearing suggests that the creditor will ultimately prevail against the debtor on the entire claim. If an attachment is made, the debtor will be prevented from using any of the attached assets for the entirety of the action,11 which encourages a debtor to come to a compromise before more time and assets are expended. In addition, a writ of attachment is a speedy remedy, which can be crucial when dealing with a debtor who owes multiple creditors. A noticed attachment hearing can be scheduled with 16 court days’ notice, and, should the circumstances require, a writ of attachment can even be granted on an ex parte basis upon a showing of “great or irreparable” injury to the plaintiff.12

There are also disadvantages to attaching property. An attachment lien will generally always be subordinate to certain other properly perfected liens, such as federal tax liens or preferred wage claims, which take priority over nonperfected claims.13 Additionally, if an attachment disrupts a debtor’s use of its property, it could push the debtor to file for an early bankruptcy to protect its assets.14 Of course, the debtor must have attachable assets in order for the writ of attachment to be useful. It is therefore a good idea to investigate the debtor’s assets before proceeding with a writ of attachment application. Writs of attachment are also typically more successful when employed against corporate defendants. Against a natural person, a writ of attachment may only be issued on claims arising from the debtor’s conduct of a trade, business, or profession.15 Certain property belonging to an individual is exempt from attachment, but all property held by a corporate defendant is subject to attachment, if there is a statutory method of levy for the property and the property is within the state.16

Writs of attachment are purely statutory and viewed by some courts to be a harsh remedy, so they are subject to strict construction.17 Specifically, no attachment procedure may be ordered by the court unless specifically provided for by the attachment laws.18 Thus, applying for a writ of attachment should not be undertaken lightly, and a thorough understanding of statutory requirements is required in order to efficiently obtain a writ of attachment.

**Conditions to Attachment**

A plaintiff may apply for a right to attach order and writ of attachment upon the filing of a complaint or at any time thereafter.19 The application must include a statement showing that the attachment is sought to secure the recovery on a claim upon which an attachment may be issued, the amount to be secured by attachment, a statement that the attachment is not sought for a purpose other than recovery on the claim upon which the attachment is based, and a description of the property to be attached.20 The applicant must also include a statement that the applicant has no information or belief that the claim is discharged or that the prosecution of the action is stayed in a bankruptcy proceeding.21

An attachment may be issued only in an action on a claim for money based upon an express or implied contract in which the total amount of the claim, exclusive of costs, interest, and attorneys’ fees, is a fixed or readily ascertainable amount exceeding $500.22 An attachment may generally not be issued if a claim is secured by a real property interest.23

In addition to an application, a hearing is required, and may be scheduled in accordance with standard notice procedures, or, in certain cases, on an ex parte basis.24 In order for a court to issue a right to attach order, 1) the attachment must be based upon a claim for which “an attachment may be issued,” 2) the applicant must have established the “probable validity” of the claim upon which the attachment is based, 3) the attachment must not be sought for a purpose other than the recovery on the claim upon which the attachment is based, and 4) the amount to be secured by the attachment must be greater than zero, as determined in accordance with the Code of Civil Procedure.25

The application must be supported by an affidavit or declaration showing that on the facts as presented, the plaintiff would be entitled to a judgment on the claim.26 All facts in the declaration must be stated with particularity, and the declarant may be any person, whether or not a party to the action, who has knowledge of the facts and can testify competently to the facts if called upon as a witness.27 Even though the declaration is, in most cases, being prepared and signed under penalty of perjury at the very beginning of the litigation prior to the start of discovery, the declaration must be completely factually accurate, as it can be used to impeach the declarant at trial.

“In determining the probable validity of a claim where the defendant makes an appearance, the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation.”28 This requires consideration of the declarations in support and in opposition to the motion, as well as a hearing.

In *Lydig*, the plaintiff included with its attachment application business records and declarations from its employees, which detailed Lydig’s understanding of Martinez’s improper steel diversion practices, demonstrated how Lydig had to intervene and pay for steel, and illustrated the damages sustained by Lydig.29 Lydig also included a verified copy of the county hearing officer’s finding that permitted Lydig to terminate the subcontract with Martinez and utilize another supplier to obtain rebar.30

Martinez’s opposition to the attachment application, on the other hand, was supported by only one declaration from an employee alleging that Lydig owed Martinez for steel and other items that Martinez had delivered to the project. The court in *Lydig* stated that the declaration did not dispute the specific factual contentions set forth by Lydig in its application, but instead asserted, among other things, that Lydig still owed Martinez certain amounts and that Martinez had delivered more than 200,000 pounds of steel that Lydig did not account for in its application. Additionally, the declaration disputed the validity of change orders submitted by Lydig but did not set forth any factual basis for the contention that the change orders were invalid.31 The court specifically noted that “the factual basis for Martinez’s claims [was] presented in a fairly conclusory manner in [the employee’s] declaration.”32

In its reply to Martinez’s opposition to the attachment application, Lydig included a further declaration, records, and a supporting contemporaneous log of the steel delivered by Martinez that directly addressed and refuted the allegations in Martinez’s opposition. The court in *Lydig* found that Lydig’s evidence sufficiently set forth the circumstances that gave rise to Lydig’s claims against Martinez and the amount of its claims.33 The trial court “plainly found Martinez’s factual presentation unpersuasive.”34 The court of appeal likewise found that Martinez failed to establish the probable validity of its claims set out in its cross-complaint; “[i]n particular, with respect to its claim that it was entitled to credit for retained amounts and for 200,000 pounds of steel, Martinez provided no proof other than Williams’s conclusory declaration, which, in turn, was rebutted both by Lydig’s accounting records and contemporaneous logs provided by Lydig. In short, Lydig’s documents entirely undermine the validity of Martinez’s claims.”35

In order to establish the probable validity of a claim, the applicant must show that it is more likely than not that the applicant will obtain judgment against the opposing party on its claim.36 When determining the probable validity of a claim, the court must consider the relative merits of the positions of the respective parties and make a determination
of the probable outcome of the litigation.37 Case law provides that only establishing a prima facie case for breach of contract is not sufficient, instead, an applicant must also show that the defenses raised in opposition to the application are less than 50 percent likely to succeed; failure to rebut a factually supported defense that would defeat the applicant’s claim prohibits the applicant from establishing probable validity.38

Offsetting the Attachment

If the circumstances warrant, the debtor defendant may reduce or offset the amount to be secured by attachment by filing a cross-complaint claiming indebtedness of the plaintiff.39 However, as the Lydig court ruled, in order for a defendant to successfully offset the amount to be secured by attachment, the defendant’s claim must be one upon which an attachment could be issued, which means that the claim must meet the requirements as to the amount and nature of the claim under Code of Civil Procedure Section 483.010.40 This means that the defendant also must establish the probable validity of the claim of indebtedness set forth in the cross-complaint in order to successfully offset any amount to be secured by attachment.41

In Lydig, the court of appeal confirmed this standard of proof for defendants seeking to offset the amount of an attachment. Responding to Lydig’s attachment application to secure the debt owed pursuant to the subcontract and guaranty, Martinez filed an answer and opposition and subsequently filed a cross-complaint in which it alleged that Lydig owed Martinez funds for rebar that Lydig had fabricated and installed, and that such owed amounts were greater than the damages alleged by Lydig. Martinez contended that it could offset Lydig’s claims under Code of Civil Procedure Section 483.015, and because its claims in the cross-complaint exceeded Lydig’s claims, the amount to be secured by attachment was completely offset and the attachment could not be granted.42

As required by the Code of Civil Procedure, with its application for a right to attach order and writ of attachment, Lydig included detailed declarations from its employees, business records, and a verified copy of the County’s hearing officer’s finding that Lydig was permitted to terminate the subcontract with Martinez and use another rebar supplier for its steel needs.43 Finding that Lydig had established the probable validity of its claim, the trial court granted its application with respect to Martinez, but not the owner of Martinez. Lydig subsequently obtained writs of attachment.44

Martinez appealed and argued that the mere filing of a cross-complaint alleging an indebtedness of Lydig to Martinez in excess of Lydig’s claims against Martinez was sufficient to defeat the writ of attachment under Section 483.015.45 Martinez argued that pursuant to Code of Civil Procedure Section 484.090, in order to issue a writ of attachment, the court must find the amount to be secured by the attachment is greater than zero, and such amount is to be determined in accordance with Section 483.015. Section 483.015 provides that the amount to be secured by attachment must be reduced by the amount of plaintiff’s indebtedness (if any) claimed by defendant, or cross-defendant, in its cross-complaint. Martinez argued that application of this section was mandatory and that the trial court erred in not applying this offset, which would have reduced the amount to be secured by Lydig to less than zero and defeated Lydig’s right to a prejudgment attachment.

Lydig, on the other hand, asserted that Section 483.015 requires the amount of indebtedness claimed by Martinez in the cross-complaint must be a claim “upon which an attachment could be issued” in order to successfully offset Lydig’s claim. Thus, the claim must satisfy the requirements of Code of Civil Procedure Sections 483.010 and 484.090. Lydig argued that these requirements apply to a claim of indebtedness set forth in a cross-complaint, not merely the plaintiff’s claim in a complaint. In order to reduce an amount to be secured by attachment, a cross-complaint must not only satisfy the requirements of Section 483.010 but also the requirements of Section 484.090—including, specifically, that the defendant must prove the probable validity of its claim. Without the probable validity requirement, any opponent to a writ of attachment could wrongfully offset the attachment amount by filing a baseless and conclusory cross-complaint that met the basic requirements for attachment.

In response, Martinez argued that neither the Code of Civil Procedure nor case law supports or even implies that a party opposing attachment must prove the probable validity of its offsetting claim, but the appellate court disagreed. The court of appeal found that requiring a defendant to establish the probable validity of an offsetting claim is a “clear implication” of the phrase “claim upon which an attachment could be issued” under Section 483.015.46

In coming to such a conclusion, the appellate court relied on the relevant federal case Pos-A-Traction v. Kelly Springfield Tire Company,37 in which Kelly Springfield Tire filed an application for right to attach order and writs of attachment to secure a counterclaim against counterdefendant Jay Krech. Pos-A-Traction, a tire distributor, sued Kelly, its tire manufacturer, for breach of contract due to Kelly’s failure to deliver all tires ordered by Pos-A-Traction. Kelly alleged that Krech, as president of Pos-A-Traction, executed and delivered to Kelly a guaranty in which he personally and unconditionally, without collateral, guaranteed the payment of all of Pos-A-Traction’s debts to Kelly, and that in reliance on such guaranty, Kelly agreed to sell tires to Pos-A-Traction on an open book account, that at the time of suit, had an unpaid balance owed by Pos-A-Traction.48

The Lydig opinion further noted that requiring Martinez to establish the probable validity of an offsetting claim “is also required as a matter of simple practicality,”49 and one justice even queried during oral argument whether this issue had not been previously discussed in California case law because it was so obvious. Although Section “483.015 does not explicitly require more than a filed cross-complaint or contract defense in an answer that would itself support an attachment,” in order “to sustain a reduction in writ amount, most courts require that defendant [or counter-defendant] provide enough evidence about its counterclaims [or claims] and/or defenses to prove a prima facie case.”50 Thus, the court of appeal held that as a matter of law, Martinez was required to establish the probable validity of its counter-claim in order to obtain the offset permitted by Section 483.015.51

In opposing Lydig’s application, Martinez had included only one supporting declaration from an employee that both the trial court and appellate court found to be conclusory and unpersuasive.52 The court of appeal affirmed the trial court’s orders, finding that Martinez failed to establish the probable validity of its claims and failed to substantiate its offset assertions with additional proof beyond the subpar employee declaration. The court of appeal also noted that the legislature intended to require a defendant to establish probable validity of its offsetting claim, because if a defendant could offset a plaintiff’s (Continued on page 58)
WATER SUSTAINS LIFE. The average person can survive only four days without it.1 Americans use twice as much water as Europeans.2 In fact, the United States uses 400 billion gallons of water every day.3 While 71 percent of the earth’s surface is covered with water,4 less than 3 percent is fresh water that can be used for drinking, agriculture, and industry,5 and 2 of that 3 percent is frozen in glaciers and ice caps.6 So, water rights are an ever more critical part of the legal landscape, especially in California.

In 2015, California entered its fourth year of drought—the driest period in 163 years of recorded rainfall history.7 Scientists estimate that the snowpack in the Sierra Nevada Mountains, which typically accounts for one-third of California’s water supply, has now reached its lowest point in more than 500 years.8 Not surprisingly, snow cannot form where it is record-breaking warm.9 Climatologists predict that the El Niño storm this winter will be one of the most powerful El Niños on record.10 But experts agree that even a powerful El Niño will not cure the Golden State’s water woes.11

Who has the right to the water that is available? That question has spawned some of the longest-running litigation in California’s history as parties battle to obtain the rights to an ever-scarcer resource. The lack of water threatens crops, industries, the environment, and the health of some of California’s poorest and least powerful populations. Indeed, the damaging effects of a California water shortage extend well beyond California’s border. California farmers produce half the fruits and vegetables in the United States—making California’s water shortage a national problem.12 New regulations have emerged that attempt to answer at least part of the complex water question. However, given the high stakes for many of the players, we can expect that parties will continue to take the fight to the state’s courts.

California’s water rights system is unique from the rest of the country in that both riparian and appropriative water rights are recognized. Riparian rights provide property owners with use of water from a river or stream that borders their land. There are two types of appropriative rights, also known as “first in time, first in right.”
rights. Before 1914, appropriative rights only required that a water user post a notice of intent to divert water. After December 19, 1914, individuals were required to file an application with the newly created state administrative agency—now known as the State Water Resources Control Board—and demonstrate that unappropriated water was available and could be put to beneficial use. Post-1914 rights are subject to a greater degree of regulation by the Water Board, but all appropriative rights may be lost through nonuse or abandonment, which has become the subject of litigation in recent months.

Another vital source of fresh water in California is groundwater. Groundwater comes from rain or snow that seeps below the earth’s surface and accumulates in large underground layers of saturated rock called aquifers. Once inside, the groundwater can be extracted through drilling wells. In a typical year, groundwater accounts for 30 percent of water use, but in years of drought it can account for up to 60 percent.

Compared to the law pertaining to use of surface water, restrictions on groundwater use in California have historically been marked by laxity. In 1903, the California Supreme Court limited groundwater use to reasonable and beneficial use. This past year, new regulations were passed in California regarding the use of California’s groundwater.

A complex network of reservoirs, dams, canals, and aqueducts delivers water across the state. Southern California currently obtains much of its water through the Los Angeles Aqueduct and the State Water Project, which is the world’s largest publicly built and operated water and power development and conveyance system and which also serves Northern California. Southern California receives a significant portion of its water from the Colorado River, which has remained a source of contention over the years. Under the Law of the River, Colorado River water is apportioned to several states known as Upper and Lower Basin states. A Lower Basin state, California is entitled to 4.4 million acre-feet per year of Colorado River water. For decades, California regularly used more than its allotment. However, as other states’ water needs grew, the federal government placed pressure on California to live within its annual allotment.

The QSA and the Salton Sea
Desperate to avoid critical water shortages in some of its largest cities, California turned to the Imperial Irrigation District (IID). In 2003, an interconnected series of agreements were made among the IID, the state of California, other California water agencies, the federal government, and Indian tribes. Collectively, these agreements are known as the Quantification Settlement Agreement (QSA).

The centerpiece of the QSA was a proposal that the IID conserve water and arrange for the long-term transfer of that conserved water to three other major Southern California water users: the San Diego County Water Authority, the Coachella Valley Water District, and the Metropolitan Water District. This is the largest water agriculture-to-urban water transfer in U.S. history. For its part, the state government agreed to mitigate the effects of the water transfers on, and to restore, the Salton Sea.

The Salton Sea, California’s largest lake, occupies approximately 370 square miles of low-lying areas in Imperial and Riverside counties in southeastern California. The sea in its current incarnation was formed in 1905, when during a flood year the waters of the Lower Colorado River broke a levee. Besides being beautiful, the Salton Sea has become one of California’s most critical environmental resources. It serves as an indispensible buffer against windblown dust emissions in the Imperial and Coachella valleys, two regions that already suffer from some of the worst air pollution in California and the nation. It is also one of the most important habitats in the United States for migratory birds, supporting numerous endangered and threatened species at a time when such habitats have dwindled and almost disappeared.

In 2003, shortly after the QSA was executed, litigation was filed regarding the validity of that agreement and the environmental impacts of the QSA transfers under CEQA. After an appeal in June 2013, the trial court issued an order validating, in part, the QSA. Appeals to that ruling have been dismissed. In November 2014, the IID petitioned the State Water Resources Control Board to compel immediate action towards the restoration of the Salton Sea. In response to the petition, a workshop examining the issue was held on March 18, 2015. At the March workshop, there was overwhelming consensus that continued inaction by the state at the Salton Sea is not acceptable.

If the state does not act decisively before the end of 2017, experts agree that the Salton Sea will contract, exposing approximately 100 miles of playa to the air, which will potentially result in massive dust storms and the emission of tens of thousands of tons of dust per year into the air, including toxic compounds of arsenic, cadmium, chromium, lead, and selenium. This would likely result in a significantly increased incidence of heart disease, heart attacks, lung cancer, asthma, and premature death in the Imperial and Coachella valleys, resulting in billions of dollars in public health costs.

Following the workshop, Governor Jerry Brown formed a task force and appointed an assistant secretary for Salton Sea policy to develop new and achievable restoration plans. The task force announced in early October 2015 that the Natural Resources Agency is committed to the immediate implementation of a Salton Sea Management Program that prioritizes protecting regional air quality and responding to habitat impacts resulting from water transfers. These actions are noted to be an essential means of maintaining the security of California’s Colorado River water supply. These are hopeful signs, but it remains to be seen whether Governor Brown’s task force will implement, and the state will fund, the efforts necessary to avoid an environmental and public health catastrophe in California.

Groundwater Legislation
California’s historic drought has had a significant impact on California’s groundwater supply. In an effort to slow the rapid depletion of California’s groundwater basins, the Sustainable Groundwater Management Act (SGMA) was implemented in early 2015. The SGMA was an unprecedented attempt at addressing the lack of comprehensive groundwater regulation in California. The SGMA requires that local agencies, designated as “groundwater sustainability agencies,” consider beneficial uses of the groundwater in order to develop monitoring plans for the long term sustainability of California’s basins. The agencies are given 20 years to implement and achieve groundwater sustainability goals.

Assembly Bill 1390 and Senate Bill 226, which were approved by the Governor on October 9, 2015, provide further clarity to the SGMA. AB 1390 added a streamlined process for adjudicating rights in a groundwater basin to the California Code of Civil Procedure. Instead of the previous groundwater dispute process, which could last for years (and employ scores of lawyers), the new law requires, among other elements, that parties initially disclose detailed information regarding extractions from the basin in the prior 10 years, the type of water rights claimed, and other details. Potentially problematic is that the law allows the adoption of a proposed stipulated judgment if it is supported by groundwater extractors responsible for at least 75 percent of the groundwater extracted during the five years prior to the action. Parties who object are required to demonstrate that the proposed stipulated judgment does not meet requirements, effectively transferring the burden of proof. Functionally, this provision will allow a majority of users to force a solution on other parties to “go with the flow” or object and shoulder the burden of proving the inequity. SB 226, in turn, clarifies that the state may intervene in groundwater adjudications, to further the objectives of the
A lawsuit brought by CSPA and Protecting Our Water and Environmental Resources (POWER) against Stanislaus County for issuing water well drilling permits without first examining their environmental impacts under the California Environmental Quality Act recently went to trial. The court order is currently being processed. The plaintiffs claimed that the wells were contaminating water supplies, drying up existing wells, and reducing the flow of local rivers. A related lawsuit against farmers in the area settled in late 2014, with the farmers agreeing to pay $190,000 for the study of groundwater conditions.

The drought has no doubt challenged California in unprecedented ways. Record high temperatures have led to a surge in water demand, and the dramatic decline in rainfall has placed increased pressure on California’s reservoirs. While Californians have tightened their water belts and allowed their lawns to go brown, and despite some key changes to California’s water laws, policies, and infrastructure, more will have to be done.

9. The drought has had wide-ranging impacts. Scientists have even begun noticing symptoms of stress on California’s iconic Giant Sequoia trees caused by the drought, finding dead foliage and patches of brown appearing more than in prior years.
15. See Millview County Water Dist. v. State Water
THE YEAR 2015 witnessed a new State Bar leader, continuing state court budget woes, and the death of one of the pillars of the legal ethics bar in California. Elizabeth Rindskopf Parker took over as the State Bar’s new executive director and chief executive officer as it battled claims for wrongful termination by former director Joseph L. Dunn, defamation by former State Bar president Luis J. Rodriguez, and retaliation by dismissed managing director of investigations John Noonen.1 No stranger to bureaucratic infighting as former general counsel of the Central Intelligence Agency and the National Security Agency, and as the former dean of McGeorge School of Law, Parker backed controversial chief trial counsel Jayne Kim for a second term, even after Kim received a no-confidence vote by the bar’s employees’ union.2

California courts struggled with funding at just 1.4 percent of the state’s general fund budget. Governor Jerry Brown vetoed the first judicial funding bill to pass both legislative houses since 2007.3 State Auditor Elaine M. Howle issued a blistering report criticizing the Judicial Council of California and the Administrative Office of the Courts for excessive compensation and wasteful expenditures that she suggested might have been redirected to the trial courts.4

The California Supreme Court granted posthumous State Bar admission to Hong Yen Chang, a native of China, 125 years after the court had denied his original motion for admission.5 Chang graduated from Columbia Law School and was admitted to practice in New York but was denied a California license in 1890 because he was held ineligible for citizenship, then a requirement for admission, under the xenophobic and later-repealed Chinese Exclusion Act.6 Chang’s exclusion was a grievous wrong that, among other things, denied California Chang’s services as a lawyer. “But we need not be denied his example for a more inclusive legal profession.”7

California lawyers mourned Paul Vapnek, who died on February 28, 2015, aged 86. An author of the Rutter Guide treatise on professional responsibility, Vapnek was a tireless legal ethics mentor and recipient of the Harry B. Sondheim Professional Responsibility Award. Rules Revision Commission colleague Mark Tuft spoke for many: “It is every lawyer’s aspiration to have a colleague and...
Conflict of Interests and Law Firm Disqualification

Generally, standing to disqualify a law firm for a conflict of interest is limited to a current or former client. In a matter of first impression, and based on the unusual facts of the case, the Fourth District Court of Appeal concluded in *Acacia Patent Acquisition, LLC v. Superior Court* that defendant SM Graphics could disqualify the plaintiff’s law firm, AlvaradoSmith, because AlvaradoSmith had represented another adversary of SM Graphics in substantially related prior litigation. SM Graphics obtained a $45 million settlement in patent litigation. AlvaradoSmith represented SM Graphics’s former lawyers in a subsequent fee dispute. After AlvaradoSmith settled the lawyers’ claim, an expert consultant from the same patent litigation retained AlvaradoSmith to sue SM Graphics over his fee. With evidence demonstrating that AlvaradoSmith, through its representation of SM Graphics’s prior lawyers, had had access to thousands of privileged documents, SM Graphics promptly moved to disqualify AlvaradoSmith. The trial court denied the motion, in part, because AlvaradoSmith had complied with protective orders by returning or destroying the privileged documents after settlement of the lawyers’ fee dispute. The court of appeal, concluding that the trial court had abused its discretion, issued a preemptory writ instructing the trial court to grant disqualification. A disqualifying conflict can arise with regard to an adverse nonclient because the risk of collusion between the attorney and the nonsuing clients would be substantial, especially if the attorney were being sued for favoring the interests of the nonsuing clients over the suing client.

Unauthorized Practice of Law

No person may recover compensation for practicing law in California unless the person is a member of the State Bar or admitted pro hac vice or the legal services fall into an exception. Applying these principles, the Fourth District Court of Appeal concluded in *Golba v. Dick’s Sporting Goods, Inc.*, that the trial court properly awarded only $11,000 in attorney’s fees and costs out of the $210,000 sought by the plaintiff’s counsel following the settlement of a class action alleging that—in violation of the Song-Beverly Credit Card Act of 1971, Sections 1747 et seq. of the Civil Code—Dick’s Sporting Goods requested inappropriate personal information from consumers during credit card transactions. The fee request included substantial fees incurred by two members of the Illinois Bar who were not admitted pro hac vice even though their firm was intended to serve as the plaintiff’s lead counsel. Local California counsel, who signed the complaints, had submitted a pro hac vice application for the senior Illinois attorney that was denied for failure to pay the administrative fee. By the time the Illinois attorney discovered this and submitted a renewed application, he had submitted pro hac vice applications in 12 other California matters, which the trial court cited as a basis for denying his renewed application. The fee motion itself established that the two Illinois attorneys had engaged in the unlicensed practice of law in California. Therefore, the attorney’s fee provision in the settlement agreement was illegal and void as to any fees sought for services provided by the two Illinois attorneys.

Malpractice

Once again, a court rejected an attempt to use communications between a client and his lawyers during a mediation as a basis for a malpractice claim. In *Amis v. Greenberg Traurig LLP*, John Amis, a shareholder in Pacific Marketing Works, Inc., was forced into bankruptcy when Pacific was unable to fund a settlement for which he and the company were obligated. He sued his lawyers for malpractice, alleging they caused him to sign the settlement agreement without advising him of the personal risks. During his deposition, he admitted that all discussions regarding the settlement occurred during a mediation. Under Section 1119 of the Evidence Code, all communications in a mediation are confidential. They may not be used
1. Generally, standing to disqualify a lawyer for a conflict of interest is limited to a current or former client.
   True.
   False.

2. A conflict can arise with respect to a nonclient if a prior representation resulted in the disclosure of the nonclient’s privileged information, and there is a substantial relationship between the two matters.
   True.
   False.

3. A settlement officer in an unsuccessful settlement conference can later represent one of the parties if she is a member of the California Bar, is admitted to the Bar, or she is a member of the California Bar, is admitted to the Bar.
   True.
   False.

4. In a joint representation, the privilege belongs to both clients, and one cannot waive the privilege for the other.
   True.
   False.

5. In an action based on breach of a duty arising from the attorney-client relationship, one joint client can prevent the other client from using privileged communications against the lawyer.
   True.
   False.

6. Serving an inadequate privilege log waives the privilege.
   True.
   False.

7. No person can practice law in California unless he or she is a member of the California Bar, is admitted pro hac vice, or falls within an exception.
   True.
   False.

8. Submitting a pro hac vice application for approval is sufficient to practice law in California.
   True.
   False.

9. Evidence of communications during a mediation cannot be introduced in evidence, whether directly or by inference.
   True.
   False.

10. Before suing a lawyer and the lawyer’s client for conspiracy, a plaintiff must obtain an order determining that there is a reasonable probability of prevailing.
    True.
    False.

11. Section 340.6 of the Code of Civil Procedure bars all stale claims against an attorney, whether or not they arise from a breach of his or her professional obligations.
    True.
    False.

12. The statute of limitations for a claim against an attorney is not tolled if the client possesses sufficient facts to give rise to a duty of inquiry.
    True.
    False.

13. A client can rely on his lawyer to discharge the duty of inquiry.
    True.
    False.

14. To avoid the anti-SLAPP statute, the acts complained of must be criminal, not merely violations of a statute.
    True.
    False.

15. If the acts complained of are protected by the litigation privilege, a plaintiff cannot show a probability of prevailing.
    True.
    False.

16. A line of California authority holds that the anti-SLAPP statute does not apply to legal malpractice actions brought by a former client.
    True.
    False.

17. The anti-SLAPP statute does not contain an exception for legal malpractice actions.
    True.
    False.

18. California’s Rules of Professional Conduct require a lawyer to allow a client with diminished capacity to make fundamental decisions regarding the engagement.
    True.
    False.

19. An attorney lacking the technical knowledge and ability for a particular matter must decline the representation.
    True.
    False.

20. When withdrawing from an engagement, a lawyer may reveal client secrets in camera or under seal.
    True.
    False.
to prove a legal malpractice claim. The Second District affirmed summary judgment for defendants. Amis argued that the lawyers’ advice could be inferred from the fact that he signed the agreement after consulting with them, even though direct evidence of their advice would be inadmissible. The court reasoned that such an inference would allow Amis to accomplish indirectly what the statutes prohibited him from doing directly. This would turn mediation confidentiality into a sword by which Amis could claim he received negligent legal advice while precluding the lawyers from rebutting the inference by explaining the advice actually given.

Conspiracy

The gate-keeping function of the Code of Civil Procedure’s Section 1714.10 for conspiracy claims against lawyers was involved in Klotz v. Milbank, Tweed, Hadley & McCloy. Plaintiffs Adam Klotz, Richard Spitz, and SageMill LLC sued Milbank, Tweed and partner Deborah Festa for malpractice, breach of fiduciary duty, and conspiracy after Stephen Bruce withdrew from SageMill and, allegedly with Festa’s advice, usurped a corporate opportunity. Festa represented Bruce initially and then allegedly began representing SageMill, Klotz, and Spitz without an engagement agreement or conflict letter. Festa denied being counsel to SageMill.

Milbank and Festa demurred, arguing that Section 1714.10 prohibits a cause of action against an attorney for civil conspiracy with her client arising from an attempt to contest or compromise a claim or dispute unless the court enters an order allowing the pleading and determining “that there is a reasonable probability that the party will prevail in the action.” The superior court overruled the demurrer, and defendants took a direct appeal under Section 1714.10(d). The Second District Court of Appeal reversed, holding that the conspiracy claim arose from legal services in connection with the settlement of a claim or dispute—namely, Bruce’s withdrawal from the partnership and request for advice on a new business opportunity, which conflicted with SageMill’s interests. The plaintiffs’ failure to obtain a court order was fatal to their conspiracy claim.

Statutes of Limitation

Nancy F. Lee retained William B. Hanley to represent her in litigation and advanced $110,000 to cover his fees. When the case settled, she demanded refund of $46,000 in unearned fees, but he refused. More than one year later, she sued in Lee v. Hanley. Hanley demurred on the ground that her lawsuit was time-barred under Code of Civil Procedure Section 340.6, which provides: “An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission.” The superior court sustained the demurrer, but the court of appeal reversed, and the California Supreme Court affirmed by a 5-2 vote. After lengthy consideration of the legislative history, the majority concluded that while Section 340.6 applies to claims other than professional negligence, “section 340.6(a) does not bar a claim for wrongdoing—for example, garden-variety theft—that does not require proof that the attorney has violated a professional obligation, even if the theft occurs while the attorney and the victim are discussing the victim’s legal affairs.” Since Lee’s complaint could be construed to allege that Hanley was liable for conversion for refusing to return an identifiable sum of Lee’s money, one of her claims did not depend on proof that Hanley violated a professional obligation, and the suit was not barred by Section 340.6.

In 2014, in Prakashpalan v. Engstrom, Lipscomb and Lack, the Second District held that a suit for malpractice and fraud arising out of a settlement 17 years earlier was not time-barred because the clients lacked knowledge of wrongdoing. In 2015, in Britton v. Girardi, a copycat suit arising out of the same settlement and against many of the same lawyers, the same court reached the opposite conclusion. Like the Prakashpalan plaintiffs, the plaintiffs in Britton were represented by the defendant lawyers in an action against State Farm arising out of the 1994 Northridge earthquake. That suit settled for $100 million, and the plaintiffs were paid in 1997. The plaintiffs claimed that they did not discover until 2012 that the defendants had allegedly misappropriated settlement funds.

The court disagreed, pointing to numerous facts in Britton establishing inquiry notice and triggering the running of statutes of limitation. For example, a 1997 letter informed the settling plaintiffs that a retired judge had made the allocation determinations. In addition, the attorneys could not distribute the settlement until the plaintiffs signed a signature page to be appended to the master settlement agreement, and that by signing, the plaintiffs agreed to the settlement terms and would no longer have any claims against State Farm. Moreover, the signature page indicated that the settlement was confidential. The court took judicial notice of the fact that two retired judges had been appointed to act as special masters to preside over the settlement, including the allocation of funds. Unlike Prakashpalan, the appellate court concluded, sufficient facts were available to the Britton plaintiffs to trigger their inquiry duty. Although they signed the signature page and dismissed their claims against State Farm, they knew they did not have the master settlement agreement, the master release, or the confidentiality agreement. They did not inquire about the special masters or the allocation. Reliance on one’s lawyer does not discharge the duty of inquiry. Plaintiffs could have inquired in 1997, so the statutes ran, and their 2012 complaint was untimely.

Anti-SLAPP

Use of Code of Civil Procedure Section 425.16, the anti-SLAPP statute, to fend off claims against lawyers produced mixed results. In Bergstein v. Stroock & Stroock & Lavan, the plaintiffs sued the lawyers for their litigation adversaries, alleging that the defendants had used privileged information from Bergstein’s former general counsel and had aided and abetted her breach of fiduciary duty. The defendants moved to strike the complaint under the anti-SLAPP statute on the grounds that litigation is protected conduct and that the plaintiffs’ complaint was barred by statutes of limitation and the litigation privilege. The plaintiffs contended the theft of confidential and privileged documents was nonlitigation conduct and illegal, and therefore, not protected by the statute. The superior court granted the motion to strike and awarded $150,000 in attorney’s fees. The Second District affirmed. To avoid the anti-SLAPP statute, the acts must be criminal, not merely violative of a statute. The focus of the anti-SLAPP statute is whether the defendants’ activity constituted protected petitioning, and the court concluded that most of the alleged wrongdoing in the complaint was litigation activity. The plaintiffs could not show a probability of prevailing because their complaint was subject to the litigation privilege under Civil Code Section 47(b) and the one-year statute of limitations for claims against attorneys (Code of Civil Procedure Section 340.6), which began to run when Bergstein executed a declaration stating that he suspected his former counsel was behind the defendants’ litigation, which was two years before he sued.

An allegedly stolen hard drive in the hands of opposing parties led to a separate lawsuit against their lawyers and an anti-SLAPP motion in Finton Construction, Inc. v. Bidna & Keys, APLC. After one of the owners of Finton Construction left the company and sued for an accounting, Finton cross-complained for misappropriation of proprietary information, charging that computer files had been downloaded to a hard drive and demanding its return. A stipulated order ultimately directed Finton’s computer expert to make copies of the hard drive for the lawyers for both sides and stated that the data could be used for purposes of the litigation. Not
content, Finton filed a new lawsuit against the lawyers, a theft report with the Costa Mesa Police Department, and a complaint with the State Bar. Finton also moved unsuccessfully to disqualify the lawyers. The superior court granted the lawyers’ anti-SLAPP motion to strike the complaint on the grounds that their actions were subject to the litigation privilege, and the Fourth District affirmed. The appellate court noted: “No attorney can litigate a trade secret case without examining the disputed materials to determine if they contain trade secrets or even contain the relevant data at all.”43 It exonerated the plaintiffs and their counsel for “scoched earth tactics” and stated: “[Plaintiff’s] overreach does not suggest zealously or righteousness, but a calculated effort to undermine the parties in the underlying case by turning their attorneys into fellow defendants…. The type of uncivil behavior and specious tactics demonstrated by filing this case represents conduct that brings disrepute to the entire legal profession and amounts to toying with the courts.”44

In Sprengel v. Zhiyut,45 Jean E. Sprengel, a 50-percent owner of Purposeful Press LLC, sued lawyers for the company for malpractice, claiming that she had an implied attorney-client relationship with them, based on her status as an owner. The defendants had been retained by the other 50-percent owner, Lanette Mohr, to defend Purposeful and Mohr in previous litigation by Sprengel. Sprengel’s malpractice suit alleged that the lawyers breached a duty to her and included claims for professional negligence, breach of fiduciary duty, constructive fraud, and money had and received. The superior court denied the defendants’ anti-SLAPP motion on the ground they failed to establish that Sprengel’s claims arose from protected activity, and the Second District affirmed. Citing a long line of authority, the majority held that the anti-SLAPP statute does not apply when a legal malpractice action is brought by an attorney’s former client claiming a breach of fiduciary obligations to the client. Although Sprengel’s claims may have been triggered by the defendants’ litigation activities, they did not arise out of those acts.46 In a dissent, Presiding Justice Dennis Perluss noted that the plain language of the anti-SLAPP statute makes no exception for malpractice claims.47

**Representing a Client Who May Have Diminished Capacity**

Representing an individual with diminished capacity presents unique challenges. The California Rules of Professional Conduct include no rule specifically addressing this issue. ABA Model Rule 1.14 directs a lawyer representing such a client to maintain, as far as reasonably possible, a normal client-lawyer relationship. This means allowing the client to make fundamental decisions pertaining to the engagement.

The year 2015 produced three noteworthy opinions on whether counsel for a client who may have diminished capacity is authorized to waive the client’s right to a jury trial in a proceeding relating to the client’s cognitive capacity. In People v. Blackburn48 and People v. Tran,49 the California Supreme Court concluded that the statutory schemes for extending the involuntary commitment of a mentally disordered offender beyond termination of parole and of a defendant who pled not guilty by reason of insanity, respectively, required the trial court to advise the defendant of his or her statutory right to a jury trial. Before holding a bench trial, the court must obtain a waiver directly from the defendant unless the court finds substantial evidence—that is, evidence sufficient to raise a reasonable doubt—that the defendant lacks the capacity to make a knowing and voluntary waiver, in which case defense counsel controls the waiver decision. In Conservatorship of the Person and Estate of Kevin A.,50 the Fourth District, applying a similar standard, reversed the trial court’s order, following a bench trial, that imposed a Lanterman-Petris-Short conservatorship on an individual diagnosed with schizoafffective disorder. The trial court should not have accepted counsel’s jury waiver when the proposed conservatee plainly expressed his wish to have a jury hear the matter: “I—I would like a full jury trial, please, your Honor, for today.”51

**Competence and Evolving Technology**

According to Clarke’s Third Law, any sufficiently advanced technology is indistinguishable from magic.52 Because of the ethical duty of competence, an attorney confronted with evolving technologies applicable to discovery of electronically stored information must take reasonable steps to understand and implement the “magic” or potentially be subject to discipline, as the State Bar’s Standing Committee on Professional Responsibility and Conduct (COPRAC) opined in its Formal Opinion 2015-193. “Legal rules and procedures, when placed alongside ever-changing technology, produce professional challenges that attorneys must meet to remain competent. Maintaining learning and skill consistent with an attorney’s duty of competence includes keeping abreast of changes in the law and in practice, including the benefits and risks associated with relevant technology.”53 An attorney lacking the technical knowledge and ability needed for a particular matter has three alternatives: 1) learn it before you need it, 2) retain technical consultants or cocounsel who know it, or 3) decline the representation.

**Bad Acts and Their Consequences**

Clients regularly learn that bad acts have consequences. Last year provided some examples in which lawyers learned a similar lesson. In Crawford v. JPMorgan Chase Bank,54 a lawyer sued a bank for selling a 29-year annuity to his 79-year old mother. Regardless of the merits of his case, the lawyer crossed the line by making contemptuous statements in court documents (characterizing the judge as a “former D.A., currently masquerading as a Superior Court Judge”), walking out on a deposition, failing to pay discovery sanctions, and pointing pepper spray and a stun gun at opposing counsel during the reconvened deposition (“if you get out of hand”). In affirming the trial court’s dismissal of the action as a terminating sanction, Presiding Justice Arthur Gilbert wrote, “Far from the trial court abusing its discretion, it would have been an abuse of discretion not to impose a terminating sanction.”55

Attorney David Tamman prepared private placement memoranda (PPMs) for offerings of debentures through which his client, NewPoint Financial Services, Inc., raised over $30 million from investors. When regulators began investigating whether the PPMs contained adequate disclosures and NewPoint’s principal was perpetrating a Ponzi scheme, Tamman substantially changed and backdated PPMs that he then provided to the regulators. In United States v. Tamman,56 the Ninth Circuit affirmed attorney Tamman’s conviction for conspiracy to obstruct justice, accessory after the fact to mail fraud and securities laws violations, altering documents to influence a federal investigation, and aiding and abetting his client’s principal’s false testimony to regulators. Tamman was sentenced to 84 months of imprisonment.

In Martinez v. State of California, Department of Transportation,57 a motorcyclist sued Caltrans for injuries after he hit a low curb between two parallel road transitions within the Orange Crush freeway interchange. During trial, Caltrans counsel Karen Bilotti repeatedly violated the court’s in limine orders during her opening statement, witness examinations, and closing argument. The appellate court granted a new trial based on counsel’s deliberate misconduct. Acting Presiding Justice William W. Bedsworth lamented, “That word—egregious—is difficult to write, but nothing else seems adequate.”58

**Withdrawal**

Rule of Professional Conduct 3-700 requires an attorney to withdraw from an engagement in certain circumstances (e.g., when the attorney’s mental or physical condition so dictates) and permits an attorney to withdraw in other circumstances (e.g., an inability to work with the client or cocounsel). Regardless, an attorney must seek permission from the court or other tribunal if procedural rules require it, and an attorney must take reasonable steps to avoid (continued on page 59)
TAX REFORM is a hot button matter in today’s political landscape and, while Congress has been unable to address meaningful tax reform, it has managed to pass substantial tax legislation—mostly in the context of the deficit-driven budget—which has made significant changes to the tax code. Most tax legislation in the past has been titled as such, but many of the tax initiatives enacted in 2015 are combined with other types of legislation: the Protecting Americans from Tax Hikes Act of 2015 (PATH Act),1 the Bipartisan Budget Act,2 the Surface Transportation and Veterans Health Care Choice Improvement Act,3 the Fixing America’s Surface Transportation Act (FAST Act),4 and the 2016 Consolidated Appropriations Act.5 Although new tax legislation may be less driven by good policy and tax reform than by budget realities, Congress enacted meaningful changes—including the permanent extension of important business tax incentives, a substantial overhaul of the procedures for examining and collecting taxes from large partnerships, more meaningful oversight of the IRS tax-exempt organizations division, and, for the first time, a provision that will limit a taxpayer’s ability to obtain a passport and travel overseas if he or she is considered “seriously delinquent.”

In 2015, President Barack Obama signed into law the PATH Act, which retroactively renewed various provisions of the tax law—the “tax extenders” provisions that have regularly expired and then extended retroactively—now making some of these provisions permanent. These provisions include the state and local sales tax deduction,6 an above-the-line deduction for elementary and secondary school teacher expenses,7 nontaxable IRA distributions to eligible charities,8 and an increased deduction for qualified conservation contributions.9 Various tax credits and other benefits were increased or adjusted: the earned income tax credit for parents of three or more children was increased10 and the earned income tax credit marriage penalty was reduced.11 The American Opportunity tax credit,12 the child care tax credit13 and excludable employer-provided mass transit and parking benefits14 were increased.

The PATH Act also made several business tax extender provisions permanent, including the research and development credit,15 the exclusion of all gain on qualified small business stock,16 increased deduction for donation of wholesome food inventory, employer credit for wages paid to employees called to active duty in the military, reduction to shareholder basis for charitable contributions of S corps.

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portions, a five-year recognition period for S corporation built-in gains tax, an active financing income exception to Subpart F, Regulated Investment Company (RIC) qualified investment entity treatment, and exemption from withholding tax of RIC interest-related dividends, and short-term capital gain dividends paid to nonresident individuals or foreign corporations. Indeed, making these provisions of the tax code permanent was one of the most important consequences of the legislation.

Commentators have observed that the most important change with the broadest tax impact is the research and development credit. This credit gives incentives to businesses to allocate spending to qualified research and development by allowing businesses to credit 20 percent of current-year qualified research and development spending that exceeds a threshold amount determined by gross receipts in earlier years. The credit cannot exceed 10 percent of total spending on qualified research for the current year. For example, businesses spending $1 million on qualified research would receive a $200,000 reduction in their taxes.

In addition to making the research and development credit permanent, the PATH Act made two significant changes. First, a qualifying small business may take the credit against FICA payroll tax liability, but it must make an election to apply the credit against FICA tax liability. Generally, a qualified small business for this purpose is a C corporation, S corporation, or partnership with less than $5 million of gross receipts and no gross receipts for any of the prior five tax years. In order to determine whether a business is a qualifying small business, gross receipts are computed under Section 448 of the IRC. Second, an eligible small business may apply the credit against alternative minimum tax liability. An eligible small business for this purpose is defined as a nonpublicly traded corporation, partnership, or sole proprietorship with average annual gross receipts for the last three tax years not exceeding $50 million.

Prior to the PATH Act, the research and development credit was available only for expenditures made before December 31, 2014. The PATH Act changes apply to expenses incurred after December 31, 2014. Accordingly, taxpayers who filed fiscal year tax returns that included a portion of the 2015 calendar year, and who had qualified research and development expenses, should consider filing amended returns to take advantage of the new, increased credit.

The PATH Act also contains several provisions relating to IRS procedures and oversight. For example, the IRS commissioner must now ensure that all IRS employees are familiar with the Taxpayer Bill of Rights. Furthermore, The IRS must terminate employees who take official action for political reasons—a provision that may arise from past issues involving IRS administration of tax-exempt organizations. IRS employees are prohibited from using personal e-mail for IRS business. In cases of unauthorized disclosure of taxpayer information, the IRS may disclose whether it has initiated an investigation. The IRS also must require employers to use an identifying number for employers other than their Social Security numbers on forms W-2. Moreover, the IRS must now allow enrolled agents to use the titles EA or enrolled agent.

Recent changes have also affected charitable organizations. The IRS must now formulate procedures for allowing Section 501(c) organizations receiving adverse determinations to request an administrative appeal. The IRS must also create streamlined procedures for Section 501(c)(4) organizations—i.e., civic leagues and employee associations—seeking tax-exempt status. Additionally, these organizations must be permitted to seek review in federal court for revocation of exempt status. Gift tax will not be imposed on contributions to Sections 501(c)(4) and 501(c)(5) (labor, agricultural, or horticultural) organizations.

Notably, the PATH Act contains several provisions relating to Tax Court procedures resolving various areas of dispute that have arisen in past litigation. The PATH Act clarifies that the Tax Court is independent of the executive branch and is not an executive branch agency. This is in response to Congress’s concern about statements made in Kuretski v. Commissioner. In Kuretski, the taxpayers argued that the president’s authority to remove Tax Court judges was an unconstitutional violation of separation of powers. In finding that such power is not unconstitutional, the D.C. Circuit Court stated that “the Tax Court exercises its authority as part of the Executive Branch.” Congress was concerned that the court’s reasoning in Kuretski may lead the public to question the independence of the Tax Court, particularly in relation to the Department of Treasury or the IRS.

The Tax Court is now authorized to establish procedures for filing complaints regarding the conduct of Tax Court judges and special trial judges, and for the investigation and resolution of such complaints. Under the PATH Act, the Tax Court is now required to conduct all proceedings under the Federal Rules of Evidence. Previously, the Tax Court could conduct proceedings using the rules of evidence applied by the U.S. District Court of the District of Columbia.

In the past, the IRS has been criticized for failing to issue notices of final determination in cases in which it refused to abate interest. Without such notice, it was unclear whether the Tax Court had jurisdiction over the interest abatement issue. The PATH Act requires that when the IRS has failed to issue a notice of final determination on a claim for interest abatement, taxpayers will still be permitted to seek review in Tax Court. Additionally, small Tax Court cases (S-cases) will now include review of IRS determinations not to abate interest if the failure to abate interest does not exceed $50,000.

The PATH Act clarifies that spousal relief and collection due process cases may be appealed to the U.S. Court of Appeals for the circuit in which the taxpayer’s legal residence is located. Additionally, when a bankruptcy petition has been filed and a taxpayer is prohibited from filing a Tax Court petition, the statute of limitations in spousal relief and collection due process cases will be suspended.

**Bipartisan Budget Act**

In addition to raising the federal debt ceiling, the Bipartisan Budget Act of 2015 includes tax provisions that dramatically change the partnership audit procedures for tax years beginning after December 31, 2017. Under the new rules, audit adjustments result in tax liability at the entity level. Qualifying small partnerships can elect out of the new rules and will be audited under the general audit rules for individuals. To be eligible for the election, the partnership must have 100 or fewer qualifying partners (individuals, estate of a deceased partner, S corporations, or C corporations).

The Bipartisan Budget Act repeals the Tax Equity and Fiscal Responsibility Act (TEFRA) partnership audit rules and Electing Large Partnership (ELP) rules, replacing them with new rules intended to streamline partnership audits and to allow for the first time the collection of income taxes at the partnership level rather than from the individual partners. Under the TEFRA rules, the IRS was permitted to audit partnerships and determine partnership income and loss at the partnership level, but the adjustments were made at the partner level. TEFRA partnership audits required significant IRS resources because to apply the adjustments determined in the audit, the IRS had to determine the amount of tax due, assess the tax, and collect the individual allocable share of tax from each partner. The ELP rules were an attempt to simplify the procedures for larger partnerships, but few partnerships elected into the ELP rules.

Absent an election out of the new rules and into an alternative regime, partnership gain and loss will be computed at the partner level and any “imputed underpayment” is assessed against the partnership at the highest statutory rate in the year of the audit or when judicial review of the audit is completed.
returns: 52 partnership returns (Form 1065)

the extended due dates for several other returns (Form 1041) to September 30, and after the issuance of the notice of final information returns to the audit year partners.

account at the partner level by issuing adjusted regime to take the audit adjustments into out of the new rules and into an alternative small partnerships, all partnerships may elect

nerships to file their returns by March 15 from the partnership. This act requires part-

their returns after receiving Schedule K-1 calendar year partnership interests generally on April 15. As a result, individuals with partnerships and individual tax returns are both due
date and reporting provisions, all of which significant tax provisions designed to raise revenue. This act includes several return due date and reporting provisions, all of which are effective for tax years beginning after December 31, 2015. Calendar year partners-
ships and individual tax returns are both due on April 15. As a result, individuals with calendar year partnership interests generally must file their individual tax returns on extension so they have enough time to prepare their returns after receiving Schedule K-1 from the partnership. This act requires partners-
to file their returns by March 15 rather than April 15, providing additional time to issue Schedule K-1 to taxpayers holding partnership interests. Return due dates for C corporations were also changed. C corporations were previously required to file their returns by March 15, but under the new return due date rules, C corporations are now required to file returns by April 15. Corporations are also now entitled to an automatic six-month (rather than three-
month) extension of time to file corporate returns. Additionally, the new rules change the extended due dates for several other returns: partnership returns (Form 1065) can now be extended to September 15, trust returns (Form 1041) to September 30, and tax-exempt organization returns (Form 990) to November 30.

Taxpayers with a financial interest in or signature authority over foreign financial accounts with an aggregate high balance that exceeds $10,000 at any time during the calendar year must file FinCen Form 114, Foreign Bank Account Report (FBAR).

Under existing law, FBARs were due by June 30 of the year following the reporting year with no extension of time available. The act makes FBARs for tax years begin-
ing after December 31, 2015, due by April 15 of the year following the reporting year, with a single six-month extension to October 15. Thus, 2016 FBARs that would other-
wise be due on June 30, 2017, will be due on April 15, 2017, unless extended to Oc-
tober 15, 2017. This change brings into line the filing dates of the FBAR form with the dates of individual tax returns and is expected to increase compliance with what has become a very important tool for IRS international enforcement.

The Surface Transportation and Veterans Health Care Choice Improvement Act also contains two significant basis provisions. Inherited property receives a step up in basis to the fair market value at the decedent’s date of death. For estate tax purposes, all of a decedent’s property must be valued at its fair market value at the date of death. In some cases, beneficiaries and estates have reported different values for the same property even though the property has been valued on the same day for both purposes. While various judicial doctrines arose requiring some level of consistency, this act now statutorily requires the basis of inherited property to equal the fair market value of the property reported on an estate tax return. This new basis consistency rule applies to property reported on estate tax returns filed after July 31, 2015. To ensure basis is consistent, the rules also impose a new information return requirement. The executor of an estate required to file an estate tax return must provide the IRS and each individual inheriting an interest in property included in the dece-
dent’s gross estate with a statement identifying the value of the interest in property as reported on the estate tax return. The same information must also be provided to certain beneficiaries. The information return and statement must be filed by the earlier of 30 days after the due date of the estate tax return or 30 days after the date the estate tax return is filed. The IRS may issue regulations on the new basis reporting rules, but has yet to do so.

This act also reversed United States v. Home Concrete & Supply, LLC, a recent U.S. Supreme Court decision. In Home Concrete, the Supreme Court held that an understatement of income resulting from an understatement of basis does not extend the three-year statute of limitations to assess tax to six years, and a treasury regulation stating that such overstatement of basis extends the three-year statute on assessment to six years was not entitled to judicial deference.

Generally, the IRS must assess tax within three years from the date a return was filed. The three-year statute on assessment is extended to six years when the taxpayer has made a substantial omission from gross in-

come. A substantial omission from gross income, which extends the statute to six years, occurs when a taxpayer omits from gross income an amount in excess of 25 percent of the amount of gross income stated in the return. The act reversed the Supreme Court’s holding that a basis overstatement cannot result in extending the three-year statute to six years. Under the new rules, an under-
statement of gross income resulting from an overstatement of basis qualifies as an omission from gross income for the purposes of extending the statute of limitations. In Home Con-
crete, the Supreme Court reasoned that the treasury regulation extending the three-year statute was not entitled to judicial deference because a regulation cannot override the Supreme Court’s prior interpretation of the statute of limitations in Colony, Inc. v. Commissioner. The new rule extending the three-
year statute of limitations is located in the Internal Revenue Code and is effective for returns filed after July 31, 2015, or returns filed on or before July 31, 2015, if the statute in effect prior to the amendments made by the act has not expired.

**FAST Act**

The FAST Act, which adds Section 7345 to the IRC, allows the IRS to limit for the first time the free travel of individuals who owe federal taxes. The new section prevents “seriously delinquent” taxpayers from traveling abroad. If the IRS certifies to the State Department that a taxpayer owes more than $50,000 in assessed taxes, penalties, and interest, the State Department may revoke, deny, or limit the taxpayer’s passport. The legislation is similar to many state legislative provisions, which cause taxpayers to lose certain rights—such as their driver’s license—if the tax bills go unpaid. Taxpayers are entitled to judicial review by filing a suit in district court or Tax Court to determine whether the IRS’s certification to the State Department was in error. Taxpayers may also reverse denials, revocations, and limits on their passports by paying the liability, entering into an installment agreement or offer in compromise, or succeeding in a claim for innocent spouse relief.

**2016 Consolidated Appropriations Act**

Since our healthcare system has become inextricably intertwined with our tax code, in 2015 the president signed into law the 2016 Consolidated Appropriations Act, which...
includes several healthcare and energy provisions. A 40 percent excise tax (frequently referred to as the Cadillac tax) was scheduled to be imposed on providers or administrators of employer-sponsored health plans that exceed certain cost thresholds beginning after December 31, 2017. The Consolidated Appropriations Act delays the effective date of the Cadillac tax to tax years beginning after December 31, 2019. This act also makes the Cadillac tax deductible by adding a provision to the IRC that specifies the tax code’s list of nondeductible taxes in Section 275 does not apply to the Cadillac tax. Accordingly, when the Cadillac tax becomes effective for the 2020 tax year, it will be deductible.

California Tax Updates
The California legislature made some notable tax changes to individual, corporate, and sales tax. For example, the California legislature made permanent the Taxpayers’ Rights Advocate provisions relating to abatement of penalties and interest. The Taxpayers’ Rights Advocate is now permanently authorized to abate penalties and interest attributable to Franchise Tax Board (FTB) error or unreasonable delay. An FTB error that may result in abatement of penalties and interest includes erroneous action or inaction by the board in processing documents filed or payments made by taxpayers and certain types of erroneous written advice. The Taxpayers’ Rights Advocate may grant relief only if no significant aspect of the error or delay is attributed to the taxpayer and relief is not otherwise available. If the Taxpayers’ Rights Advocate grants relief in excess of $500, the relief must be submitted to an FTB executive officer for concurrence. The Taxpayers’ Rights Advocate may not grant relief in excess of $10,000 per tax year, adjusted for inflation beginning January 1, 2017. A refund may be paid as a result of Taxpayers’ Rights Advocate penalty or interest relief only if the applicable statute of limitations for a claim for refund remains open as of the date of the basis for providing Taxpayers’ Rights Advocate relief.66

The California legislature also enacted a refundable state earned income tax credit applicable to tax years 2015 and later. The California refundable earned income tax credit is in modified conformity with the federal earned income tax credit, allowing eligible individuals an earned income tax credit and a refund of the excess credit amount over individual taxes owed. The amount of the credit is determined in accordance with Section 32 of the IRC, although the state has provided its own nonconforming phase-out percentages. The refundable amount of the credit is equal to the portion of the earned income tax credit allowed by federal law.

Beginning January 1, 2017, employers with 10 or more employees must file income tax withholding returns and pay withholding tax electronically, unless a waiver is granted. Beginning January 1, 2018, all employers must file income tax withholding returns and pay withholding tax electronically. The Employment Development Department (EDD) may grant waivers to these requirements if the employer’s business is not automated, the employer shows good cause, the employer shows a current federal exemption from electronic filing, or the employer shows severe economic hardship.68

The expansion of the commercialization of medical marijuana has found its way into required changes in the sales and use tax law. New state legislation requires the State Board of Equalization (SBE) to implement a system for reporting the movement of commercial cannabis and cannabis products throughout the distribution chain. The system must, among other things, be capable of providing at a minimum all of the following information to the SBE: 1) the amount of tax due by the designated entity, 2) the name, address, and license number of the designated entity that remitted the tax, 3) the name, address, and license number of the succeeding
entity receiving the product, 4) the transaction date, and 5) any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products. The new sales and use tax provision was included in a bill aimed at medical marijuana safety and regulation and assists in tracking medical marijuana transactions for sales tax purposes.

Nor are counterfeiters forgotten in the sales and use tax system. Existing sales and use tax laws impose a tax on retailers on their gross receipts from the sale of tangible personal property sold at retail in California, or on the storage, use, or other consumption of tangible personal property purchased from any retailer for storage, use, or other consumption. Under newly enacted legislation, a retail sale, or sale at retail, includes a sale by a convicted seller of tangible personal property with a counterfeit mark, a counterfeit label, or an illicit label on that property, or in connection with that sale, regardless of whether the sale is for resale in the regular course of business. Additionally, “storage” and “use” each shall include a purchase by a convicted purchaser of tangible personal property with a counterfeit mark, a counterfeit label, or an illicit label on that property, or in connection with that purchase, regardless of whether the purchase is for resale in the regular course of business. The new legislation expands retail sale, sale at retail, storage, and use to include the terms “counterfeit label” and “illicit label” where existing law only included the term “counterfeit mark.” Accordingly, the new law expands taxable retail sales to include more counterfeit and illicit sales.

While tax reform and simplification are the stated goals of most in Congress and state legislatures, the reality of recent tax legislation is that although meaningful tax reform has thus far proven to elude the ability of Congress, our lawmakers continue to add new tax provisions that raise revenue and make the tax system more complex.

7 26 U.S.C. §62(a), (d).
11 Id.
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UNITED STATES OF AMERICA

v.

JESUS HERNANDO ANGULO
MOSQUERA

CASE NO: 8:14-cr-379-T-36TGW

ORDER

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.

I. 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.

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20 Sunnyside Avenue, Suite A-321, Mill Valley, CA 94941, (415) 381-3133, fax (415) 381-3131, e-mail: jrutchik@neoma.com. Website: www.neoma.com. Jonathan S. Rutrich, MD, MPH is a physician who is board certified in both Neurology and Occupational and Environmental Medicine, and an Associate Professor at UCSF. He provides clinical evaluations and treatment, including electromyography, of individuals and populations with suspected neurological illness secondary to workplace injuries or chemical exposure. Services include medical record and utilization review and consulting to industrial, legal, government, pharmaceutical, and academic institutions on topics such as metals and solvents, pesticides, mold exposures, product liability, musicians’ injuries, and others. Offices in SF, Richmond, Petaluma, Sacramento, and Eureka/Arcata. Licensed in CA, NY, MA, NM and ID. See display ad on page 47.

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1111 Town and Country K34, Orange, CA 92868, (714) 904-2821, 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.

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2832 Manhattan Avenue, Glendale, CA 91214, (818) 495-5344, e-mail: classonearb@icloud.com. Website: www.classonearb.com. Contact James Komen. Tree appraisal, tree risk assessment, tree viability, and damage assessment.

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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. Celebrating 20 years, On The Record has assisted thousands of attorneys and 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. OTR Voted #2—2014 and

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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.

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Applying *Lydig* to the Requirements for Requesting a Writ of Attachment

(continued from page 15)

probably valid claim with a cross-claim that was probably not valid, "a defendant could always and easily defeat a plaintiff's right to a prejudgment attachment." The court explained, "We do not believe that in adopting our state's prejudgment attachment procedures the Legislature intended to effectively deprive litigants of the right to such prejudgment relief.

Because the same standard of proof required of an applicant is also required of an opponent to obtain an offset or defeat the attachment, those seeking and those defending writ applications must be cognizant of the strength of their claims and the evidence they present to the court. The mere filing of a cross-complaint will not be sufficient to offset any amount of a writ of attachment if the defendant is not able to establish the probable validity of its success on its counter-claims.

Writs of attachment are effective tools for collecting on business and commercial debts and can prevent the debt from becoming uncollectible due to a debtor's going into bankruptcy or out of business. Though it can be expensive and risky, it could be the only way to ensure a wronged party to a contract receives its due payment. In a commercial contract dispute regarding payment, it is always best to get to the courthouse first as a plaintiff and file a writ of attachment application right away to protect the client's interests. It can be a game changer and help beat the opponent at the start of the case.

However, though the lien terminates automatically upon a petition for bankruptcy, if the petition is dismissed, the lien will be reinstated as if it had not been terminated. CODE CIV. PROC. §493.030(a)(2).

1 See CODE CIV. PROC. §483.010(c).
2 CODE CIV. PROC. §§487.010(a), (b). When the defendant is a natural person, the property of the defendant subject to attachment is limited to the categories set forth in Code of Civil Procedure §487.010(c).
3 CODE CIV. PROC. §§481.010 et seq.
5 CODE CIV. PROC. §484.010.
6 CODE CIV. PROC. §484.020.
7 CODE CIV. PROC. §483.010(a).
8 An attachment may be issued when a claim was originally secured but the security has become valueless or decreased in value to less than the amount then owing on the claim, without any act by the plaintiff or person to whom the security was given. CODE CIV. PROC. §483.010(b).
9 CODE CIV. PROC. §§484.040, 484.090, 485.010(a).
10 No writ shall be issued unless after a hearing, and a defendant must be served with a copy of the summons and complaint, a notice of application and hearing, and a copy of the application and of any affidavit in support of the application.
11 CODE CIV. PROC. §§484.090, 483.015.
12 CODE CIV. PROC. §484.030. A declaration may be used instead of an affidavit if executed under penalty of perjury. CODE CIV. PROC. §2015.5.
13 CODE CIV. PROC. §482.040.
16 Id. at 941.
17 Id. at 940-42.
18 Id. at 945-46.
19 Id. at 940-42.
20 Id. at 945.
21 CODE CIV. PROC. §481.190.
24 CODE CIV. PROC. §§483.015(b)(2). (citing AHART , supra note 41, at ¶4:64 (2014) [hereinafter AHART]).
25 See CODE CIV. PROC. §§484.030, 482.040.
26 Lydig, 234 Cal. App. 4th at 943. (citing AHART , supra note 41, at ¶4:64 (2014) [hereinafter AHART]).
27 CODE CIV. PROC. §483.010(b).
28 Lydig, 234 Cal. App. 4th at 942. (citing AHART , supra note 41, at ¶4:64 (2014) [hereinafter AHART]).
29 CODE CIV. PROC. §§484.030, (d), (f).
30 Id. at 945-46.
31 As per Lydig's attachment application rather than in Martinez's cross-complaint. Lydig, 234 Cal. App. 4th 944-45.
32 Id. at 945.
33 Id. at 945-46.
reasonably foreseeable prejudice to the client’s rights.⁵⁹

In Formal Opinion 2015-192, COPRAC reiterated that a lawyer’s duties of loyalty and confidentiality under Rule of Professional Conduct 3-310 and Business and Professions Code Section 6068(e) limit what a lawyer who wishes to withdraw can tell the court. “An attorney may disclose to the court only as much as reasonably necessary to demonstrate her need to withdraw, and ordinarily it will be sufficient to say only words to the effect that ethical considerations require withdrawal or that there has been an irreconcilable breakdown in the attorney-client relationship.”⁶⁰ Revealing client secrets in camera or under seal does not excuse a violation of Rule 3-100 and Section 6068(e). Nor does a court order requiring the attorney to provide a detailed explanation, although such an order may force an attorney to choose between two ethical duties—to preserve the client’s secrets or to obey a court order. COPRAC encourages the attorney to act cautiously but “cannot categorically opine which ethical obligation should prevail.”⁶¹

In Cavemen Foods, LLC v. Ann Payne’s Caveman Foods, LLC,⁶² the Eastern District denied Baker & Hostetler’s motion to withdraw from representing a defendant in a trademark infringement case even though Baker supported its motion with an attorney declaration that stated that the defendant was no longer an active company and had no office, telephone, e-mail, employees, or forwarding contact information in the United States. The court’s own internet search revealed that the defendant had ongoing operations in Canada. Baker had not satisfied its obligations under Rule 3-700, including demonstrating the defendant’s understanding that Baker’s withdrawal would result in a default judgment’s being entered against the corporation unless it retained other counsel. In Citizens Development Corporation v. County of San Diego,⁶⁳ a CERCLA case, the Southern District granted a motion to withdraw by plaintiff’s cocounsel Wood, Smith, Henning & Berman LLP because the client’s conduct made it unreasonably difficult for Wood Smith to continue. The plaintiff’s insurer appointed Wood Smith to represent the insured. The plaintiff’s motion included communications to Wood Smith from the plaintiff’s retained counsel reflecting “an adversarial, confrontational tone...which the Court would find uncivil if used when addressing opposing counsel, much less co-counsel.”⁶⁴ The cross-motion demonstrated that the plaintiff’s conduct had made it unusually difficult for Wood Smith to continue to represent the plaintiff, thereby justifying Wood Smith’s motion to withdraw.

Getting Paid

An insurer was permitted to seek reimbursement for excessive legal fees directly from its insured’s Cumins counsel, rather than from the insured, in Hartford Casualty Insurance Company v. J.R. Marketing, LLC.⁶⁵ Initially, Hartford refused to defend its insured and was compelled by court order to pay for independent counsel under a reservation of rights. The insurer subsequently contended that the Cumins counsel padded its bills by charging excessive fees and sought reimbursement. Because the court order expressly preserved the insurer’s right to challenge and recover payments for excessive fees, the California Supreme Court held that Hartford could recoup the overbilled amounts directly from the Cumins counsel. On these facts, responsibility for excessive billing should not fall on the clients.⁶⁶

In Los Angeles County Bar Association Opinion 526, LACBA’s Professional Responsibility and Ethics Committee opined that a contingency fee lawyer could ethically negotiate a fee agreement that gives the lawyer first proceeds and shifts to the client the risk of nonpayment. Any such risk-shifting requires the client’s informed consent, and must be based upon full and fair disclosure of pertinent information known to the lawyer.⁶⁷

5 In re Chang, 60 Cal. 4th 1169 (2015).
6 In re Hong Yen Chang, 84 Cal. 163 (1890).
7 Id. at 1175.
8 E-mail from M. Tuft to Rules Revision Commission, Mar. 2, 2015 (on file with authors).
11 Id. at 1104.
13 Id. at 1432.
14 Id. at 1444 (quoting Cho v. Superior Court, 39 Cal. App. 4th 113, 125 (1995)).
17 Id. at 1257.
19 Id. at 1260.
21 Id. at 11.
26 Id. at 142.
28 Id. at 1345.
29 Id. at 1352.
31 Id. at 1237.
32 Id. at 1240.
35 Id. at 727-28.
36 Id. at 729-30.
37 Id. at 737.
39 Id. at 806, 809-10.
40 Id. at 811.
41 Id. at 813, 816-17.
43 Id. at 212.
44 Id. at 204.
46 Id. at 155-56.
47 Id. at 162.
49 People v. Tran, 61 Cal. 4th 1160 (2015).
51 Id. at 1251.
52 Arthur C. Clarke, Profiles of the Future: An Enquiry into the Limits of the Possible 36 (1982).
55 Id. at 1271.
56 United States v. Tamman, 782 F. 3d 543 (9th Cir. 2015).
58 Id. at 561.
59 Cal. RULES OF PROF’L CONDUCT R. 3-700(A).
61 Id. at 7.
64 Id. at *5 (emphasis in original).
Litigation, Civility, and How Nice Guys Can Finish First

THE CALIFORNIA SUPREME COURT recently felt the need to adopt a rule that requires newly admitted attorneys to swear, as part of their oath of admission to the State Bar of California, that “I will strive to conduct myself with dignity, courtesy, and integrity.”¹ Moreover, the Central District and the Los Angeles Superior Court have codified guidelines admonishing attorneys to be civil because “there has been a discernible erosion of civility and professionalism in our courts.”² Litigators in California can attest to the truth of that assertion.

Overt hostility, gamesmanship, and markedly uncivil conduct often seem more the norm than the exception. Clients often pressure lawyers to be hyperaggressive, leading their counsel to worry that treating “the enemy” courteously will undermine their client relationships. Many lawyers erroneously think judges and juries will think them (or their cases) weak unless they fight over every issue, no matter how trivial. Legal scholars opine that the decline in civility is systemic and decry the transformation of the legal profession into a revenue-focused industry in which clients expect their counselors to advance any argument and use any tactic, no matter how baseless or tawdry. In such a climate, the loss of civility is inevitable.

Since I began practicing, I have faced unprofessional conduct countless times. Adversaries have refused to grant me routine extensions, intentionally mailed documents on a Friday night so I wouldn’t get them until the following week, scheduled depositions when my child was having surgery, attacked my character, refused to shake my hand, and filed a trivial “ex parte” on Christmas Eve that required a response within 24 hours. My personal favorite is the opposing counsel who refuses to produce a single document, even those he or she admits are relevant, unless compelled by a court order.

In the face of what sometimes feels like an avalanche of poor behavior, the obvious temptation is to fight fire with fire. I confess that I have occasionally succumbed. Yet experience has convinced me that the best way to advance my client’s interest is to be professional and civil. Two examples illustrate that nice guys do not finish last.

Recently, I moved to dismiss an action as barred by res judicata. Although my adversary’s conduct bordered on sanctionable, my team took the high road. While we refuted the plaintiff’s arguments, we avoided personal attacks. Conversely, my adversary littered his brief with invective, accusing me and my client of odious (but baseless) wrongs. At the hearing, he harangued my client and me personally. At one point, my client leaned over, urging me to be more aggressive. There was no need. Our usually reserved judge had had enough: “[COURT]: I’m going to stop you right there. Throughout this proceeding you have disparaged the folks at the back table. I certainly understand that you disagree with what they did. But in this courtroom I take offense at efforts to malign the conduct or the integrity of the attorneys. So please stop with words like ‘pretending’ and please stop with vocal inflections such as you were using earlier in describing their conduct. [Plaintiff’s Counsel]: That is completely false, your Honor, with all due respect. [COURT]: Please don’t ever say ‘with all due respect’ to me, sir. That is a statement that makes no sense to me because it usually means you have no respect. [Plaintiff’s Counsel]: I’m sorry, your Honor. [COURT]: Yes. You’re striking out repeatedly today.” I think you can guess the outcome of the case.

In another case, I pitched to defend an action filed by an attorney infamous for his Rambo tactics. All my competitors promised to be just as, if not more, abrasive. I promised the opposite. I told the client we would immediately make friendly contact with the other side, and narrow the issues from the outset. We did precisely that. The plaintiff’s counsel, while initially wary, quickly came to appreciate the more civil and nuanced approach of actually focusing on the key issues. As a result, we pared the case substantially and negotiated an efficient and cost-effective discovery plan and trial phasing by avoiding the needless (and costly) fights that typically pervade complex litigation. Scheduling depositions, hearings, and discovery obligations, normally the bane of any litigator’s existence, were mundane events easily handled to everyone’s satisfaction. Our civility did not mean that the case was not hard fought, just that my client’s resources were devoted to issues that mattered. At the successful conclusion of the action for my client, the plaintiff’s counsel asked my permission to directly speak to my client so he could tell them that he wished all cases could be handled in such a manner and that he was settling for far less than he ever thought he would because of the way the case was litigated. The client was not only thrilled with the outcome but also with the economical manner that the case was handled and has since retained us several times.

Engaging in petty behavior disserves our clients. Not paradoxically, some of my hardest-fought cases were against unfailingly courteous opposing counsel. You can be zealous and professional, and we all should strive to do so in every case. It is not just the right thing but the good thing to do for you and your client.

² U.S. Dist. Ct., Central Dist. of Cal., Civility and Professionalism Guidelines, Preamble; Super. Ct. of Cal., County of Los Angeles Guidelines for Civility in Litigation, App. 3.A.

Jason D. Russell is a litigation partner in the Los Angeles office of Skadden Arps Slate Meagher & Flom.
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<th>Benefit Amounts and Quarterly Premiums</th>
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Rates shown are the quarterly term life premiums for non-smokers. Other payment modes are available. Please call ISI at 1-888-ISI-1959 with any questions.

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