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Ms. Keller’s selection, as one of only 31 attorneys inducted into the Hall of Fame over the years, is another in the line of her many recent statewide and national awards as one of the nation’s premier trial lawyers. A fellow of the American College of Trial Lawyers, she has tried over 150 cases to jury verdict, ranging from complex civil matters — including business and intellectual property cases — to white collar prosecutions. Jennifer has received innumerable awards for excellence as a trial lawyer and excels at “bet the company” litigation. She thrives on these tough cases: the ones where a client’s company, fortune or liberty are on the line. Keller/Anderle LLP has won over $925 million in verdicts and judgments for our plaintiff clients, and successfully defended many other high-stakes cases.
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I have always thought that cryptocurrency was an apt name for Bitcoin and similar digital assets. My initial efforts to understand such digital assets and how they work only served to make them seem more cryptic. In this issue, we continue our discussion of cryptocurrency. While I now have a much better understanding of cryptocurrency, it remains to be seen whether they are legitimate assets or an elaborate technological Ponzi scheme.

Blockchain, the technology that enables cryptocurrencies, has also been advanced as a way to allow for secure transactions. Further, blockchain, coupled with artificial intelligence, has been suggested as a development that will eventually make lawyers obsolete. How ironic if the technology we currently struggle to regulate were to eventually render us obsolete.

Of course, this is not the first time the death knell has been sounded for the legal profession in my recent recollection. When large accounting firms began hiring numerous attorneys, it was conventional wisdom that accountants would soon control the legal profession for the benefit of corporations. Big, independent law firms were expected to fade away. Then the Enron scandal came along. The benefit of an independent legal profession was recognized, and few now believe that independent law firms will disappear to be replaced by large legal arms within accounting firms.

The legal self-help industry, represented by companies like Legal Zoom, has also been expected to dramatically reduce the amount of work being done by attorneys. While it has seemed to reduce the amount of routine legal work being done by lawyers, and placed downward pressure on the amount that can be charged for such work, it does not look like it will completely replace the legal profession. Lawyers will continue to be needed for complex and specialized legal matters. Indeed, the self-help industry has created work for lawyers who provide guidance to those having further questions about their matters not addressed by the self-help program.

So, will self-learning machines, able to access mounds of legal precedent to reliably predict how further matters should be resolved, finally do us in as a profession? I think not. Many times the value of the legal profession rests in knowing when a course correction is required, when we should depart from established precedent. It seems unlikely to me that self-learning machines would have been able to develop the right of privacy and the right of publicity as new legal doctrines. Could artificial intelligence have moved from contributory negligence to comparative negligence? Would an intelligent machine have been able to formulate the Miranda warnings?

Blockchain and artificial intelligence undoubtedly will be—and in some cases already are—being used by the legal profession as tools to provide better, more cost-effective service. But I believe compassionate, caring, and intelligent human lawyers will remain in control. What seems certain, however, is that the legal profession will continue to be both interesting and challenging for the foreseeable future.

Thomas J. Daly is the 2018-19 chair of the Los Angeles Lawyer Editorial Board. He is a partner in Lewis Roca Rothgerber Christie’s Intellectual Property practice group in Los Angeles. A litigator, he focuses on strategies to obtain and protect patents and trademarks.
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The Bench, the Bar, and Judicial Independence

As we continue to look at ways that the Los Angeles County Bar Association can improve its benefits to the legal community, we should take a closer look at the relationship between the bench and bar. One of the promises made at the beginning of our current presidential year was to look at how we can have closer and better relationships with our judges in Los Angeles County. LACBA already does a good job of fostering strong relationships with our local judiciary, and there are some specific ways we can make that bond even stronger.

When it comes to building strong ties between our membership and the bench in the county, LACBA is a preeminent organization. This pertains not only to the Superior Court but also the Federal District Court for the Central District of California, the Second District Court of Appeal, the Ninth Circuit Court of Appeals, and the California Supreme Court. We offer our members unparalleled access to bench officers, and our Litigation Section is incredibly successful in promoting these relationships.

In addition to the Litigation Section, the Family Law and Probate sections are working hard to build positive relationships with judges. Virtually every section that has dealings with specific bench officers is doing a remarkable job improving those relationships and offering members an opportunity to meet and learn. New lawyers have the opportunity to meet the very judges they will appear before during their careers.

A major focus of our program this year is expanding access to include law students, paralegals, and other paraprofessionals. We are working closely with the bench to provide other opportunities for people to work with the courts. In the 140 years that LACBA has existed, we have worked closely with the bench on a number of important issues including our domestic violence, veterans, immigration, and HIV/AIDS projects. These charitable programs allow our members to work closely with judges and provide vital services to those in need. Many LACBA members are not aware of all the opportunities available to them to interact with the judiciary on a regular basis.

Open Courts Coalition

Of course, any discussion of this topic would be incomplete without mention of the good work of the Open Courts Coalition that began during the brutal defunding of the courts over the past 10 years. We hope that when the new governor is sworn in, he will work with LACBA to provide more funding and help us build a state-of-the-art court system that will become the model for the entire United States.

Judicial Independence

We are also working with a task force made up of bar leaders and judges throughout the state to deal with preserving the independence of the judiciary in California. We may not like every judge, especially those who have ruled against us, but the vast majority of judges in the State of California, and specifically in the County of Los Angeles, are hardworking men and women who have dedicated their lives to public service and to providing justice for all.

If you have ever spent time in a state where the judiciary is elected, you can understand how judicial independence suffers. Judges running for office are raising money from the very lawyers and litigants who appear in front of them. Contested elections become public spectacles. Voters watch as judges run ads appealing to the will and vagaries of public opinion.

Last summer, Santa Clara County Superior Court Judge Aaron Persky was unseated by a recall campaign, the first in more than 80 years. The judge was doing his job in a case that received national attention and was roundly criticized. The recall of five judges over the span of almost 100 years is not an epidemic. However, it serves to remind us we cannot let public opinion control our judiciary. We must work to prevent this kind of attack.

Also, a longstanding sitting judge in Los Angeles County was challenged for reelection. While respecting the election process and the ability of all citizens to participate in our democracy, challenging a sitting judge may well serve to undermine the independence of the judiciary. Lawyers must support the bench when

The 2018-2019 president of the Los Angeles County Bar Association, Brian S. Kabateck is founder and managing partner of plaintiffs law firm Kabateck LLC in Los Angeles where he practices in the areas of personal injury, insurance bad faith, pharmaceutical litigation, wrongful death, class action, mass torts, and disaster litigation.
this occurs. Judges are usually prohibited by the canons of ethics from participating in campaigns. While there is an exception for the election, it is unseemly for judges to become overtly engaged in the political process. Therefore, LACBA can serve a better function by protecting the judiciary and working with them.

**Judicial Appointments**

LACBA has an active Judicial Appointments Committee that works extraordinarily hard to provide the governor’s office with information and advice about prospective candidates. I have been told by the governor’s office that Los Angeles County has the most sought-after judgeships in the state with numerous applicants. LACBA does its best to vet the possible candidates and provide the information to the governor and his staff for their evaluation and concern. This is not idle work that is quickly put into the round file in the governor’s office but is used by the governor’s office in determining which candidates will effectively represent the people of Los Angeles County. We continue to ask people to submit applications to become part of this important blue-ribbon committee.

LACBA also has a Judicial Elections Evaluation Committee that convenes every two years to evaluate candidates for judicial office on the open ballot. It is our job as the leadership of LACBA to provide fair and independent evaluation of the judges. I have asked former Los Angeles County District Attorney Steve Cooley to chair a blue-ribbon committee to look at how we can do a better job of evaluating judicial elections and to provide input. While that next judicial election is not until 2020, it is important that we now evaluate how it operates and how it can better do its job.

**Continued Support**

The Los Angeles Superior Court under outgoing Presiding Judge Daniel Buckley, incoming Presiding Judge Kevin Brazile, and incoming Assistant Presiding Judge Eric C. Taylor will continue to find support in LACBA. We will continue to work together and link arms to protect the independence of the judiciary. In whatever form the practice of law takes for you and whether you are a trial lawyer, transactional lawyer, litigator, or a judicial officer, the Los Angeles County Bar Association is here to ensure stability in our practice. We need to support each other.

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1 Tracy Kaplan, California’s First Judicial Recall in 86 Years to Appear on Santa Clara County Ballot, MERCURY NEWS, Feb.6, 2006, available at https://www.mercurynews.com/2018/02/06/5045019/.

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**MY LACBA STORY**

From new attorney to associate general counsel for the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), Sarah Luppen Fowler joined the Los Angeles County Bar Association when she was a law student in 2008, and went on to serve in numerous leadership roles throughout the association including as Barristers/Young Attorneys Section president and as a member of LACBA’s Board of Trustees. In a few short words, Sarah shares her LACBA story and the impact that being an active member of the association has had on her career and personal life.

This is Sarah’s story:

Both of my parents are lawyers, so becoming a lawyer was sort of like going into the family business. I graduated from Vanderbilt University Law School in Nashville, Tennessee, and have been practicing for 10 years. In fact, I just went to my 10-year law school reunion, which seems impossible. Though I started out practicing general business litigation, over the years, I began to specialize in entertainment litigation and am now associate general counsel for SAG-AFTRA, the labor union representing over 160,000 actors and performers.

Having gone to law school in Tennessee, I did not have an alumni community to support and mentor me when I arrived in Los Angeles. LACBA and the Barristers/Young Attorneys Section stepped in to fill that role for me. Every job since my first job out of law school, I got through a LACBA connection. It is also how my husband and I got together, so it has played a huge role in my personal life as well.

I would strongly encourage new attorneys to get involved with LACBA’s Barristers/Young Attorneys Section and to take advantage of all that it offers. LACBA and the Barristers/Young Attorneys Section present opportunities to work with—and prove yourself to—people you would not ordinarily get to substantively interact with in the early stages of your career. A good impression made when moderating a panel or helping to plan an event can lead to your next job or client referral…or spouse! Also, it’s a lot of fun.

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We invite you to explore all the benefits of LACBA and Barristers/Young Attorneys Section membership, which is free to all first- and second-year attorneys. If you have questions about your membership or how to get involved, please contact LACBA Member Services at 213-896-6560.
Rob Hennig  Founder and Managing Partner, Henning, Ruiz, and Singh

Rob Hennig represents individuals in litigation matters involving employment discrimination, sexual harassment and discrimination, whistleblower issues, government fraud (qui tam cases), and wage and hour issues. He has taught courses in constitutional law and judicial politics at UCLA, including the first LGBT politics course at UCLA. Hennig served on the board of directors of the American Civil Liberties Union of Southern California, including as past president of its Lesbian and Gay Rights Chapter. He earned his J.D. from Berkeley (Boalt Hall).

Describe the perfect day. A day in trial.

You don’t find them stressful? All good things are stressful.

You earned your law degree from Boalt in 1994. Why did you want to become a lawyer? Who knows what you want when you want it when you’re young?

Good choice? It’s been an enormously fun ride because I’ve been able to do things that I’ve always wanted to do and do them pretty well.

You earned a Ph.D. in Jurisprudence and Social Policy at Berkeley School of Law. One simple takeaway? We have an imperfect judicial system, but that doesn’t mean that it’s not useful. It doesn’t mean it’s not important.

Did you hope to right some of the wrongs? You have to work within the system. The idea that you’re going to change how we administer justice in this country in some big way is a very, very big lift.

You spent years in the Bay Area doing graduate work, but you live in Los Angeles. Are you an L.A. guy? Berkeley is beautiful in the fall, but then it gets cold. I came down for a weekend in L.A. and thought, “This is much more what I had in mind.” The people in the Bay Area hate me for saying that.

You founded your law firm in 2003. Who is a typical client? Someone who has been fired, who thinks it was wrong, and who is upset about it. What we find out a lot of times is that it was legal.

Most of your clients come from communities that have been marginalized. How does this call to you? I think employment is incredibly important because we as a society have said that we are going to treat everyone equally, and that’s not happening. There is implicit bias and explicit bias. We can’t do a lot about the implicit bias, but we can do something about the explicit bias.

Your Google reviews say that you fight for the “little people.” Who are they? When clients come to us, this is generally one of the lowest points of their lives.

Your firm has a busy appeals practice. Do you prefer litigation or appellate work? We’re very busy with appeals because we feel there are quite a few wrong decisions. Appellate work is about the law. Trial work is about people, and I find people far more compelling.

You were the co-founder of Equality California, the largest LGBT state advocacy organization in the country. What is your opinion of Trump’s ban on certain military personnel? Trump wanted to eliminate transgenders, particularly people who transition.

Should the country have to pay for sex reassignment surgery in the military? There’s an assumption that every transgender person is going to get all of the surgery done. Not necessarily. People vary in how much surgery they want.

Yes, but who should pay for it? The issue is whether that’s part of health care coverage in general. We’ve found that more and more health care programs are covering it.

Why is society troubled by transgenders? Transgenders challenge our notions of what it means to be male and female. The parents go through so much.

You’re a volunteer attorney for the Los Angeles LGBT Center’s Legal Services Program. What is a representative case? Men who are more effeminate who are being harassed at work, particularly in macho work environments.

In the LGBT community, there’s been a linguistic revolution as to pronouns. Why? I avoid pronouns as much as possible, but people know if you’re approaching them as a person.

Is it a big deal? One of the things you see is that there’s some gender fluidity. LQBT rights, very often, are not about who you’re having sex with, it’s about who you are presenting as.

Are the times a changin'? Talk to kids, talk to your average 20-year-old, it doesn’t matter to them. This is all about an older generation holding on.

In 1999, you taught the first LGBT politics course at UCLA. What did you want to impart to your students? Rights are not automatic; you have to fight for them.

What is the difference between the federal
Americans with Disabilities Act (ADA) and California’s Fair Employment and Housing Act (FEHA)? The ADA has a more constricted view as to what’s protected in terms of disabilities.

What do you look for in these cases? We look to see if the employee was accommodated. When an employer has someone with a disability, approach that person by asking, “How can we make that person a vital part of the work force?” That doesn’t happen.

In a single individual case against Cal Trans, your client recovered $600,000.

What did Cal Trans do? The jury found they did not accommodate him. They did not find for him for discrimination or for retaliation.

Cal Trans is a huge employer with more than 18,000 permanent employees. Are larger companies bigger offenders than smaller companies? In larger companies, often there is a lack of accountability. Smaller companies don’t think they’re breaking the law.

The U.S. Supreme Court ruled against the PGA as to a disabled golfer who requested use of a cart. Why? They said that walking is not part of golf.

What is an example of a request for an unreasonable accommodation? An employee who has difficulty working with particular people—you can’t tell employers who can supervise you and who can’t.

What about the employers’ needs? Employers normally don’t like it [reasonable accommodation] because it makes it [the workplace] less flexible. It’s a lot of burden on people, especially if you start your own business.

Too burdensome? What is more expensive for society: someone who is productive in the work force or someone who is not?

Are mental disabilities harder fought than physical disability? Yes, they are often unseen and unappreciated.

What is the good faith interactive process that is required by FEHA? If the employee proposes a reasonable accommodation and you can’t do that accommodation for whatever reason, you have to talk to the employee to figure out the next best reasonable accommodation.

You have helped recover over $750 million in qui tam (whistle-blower) matters. Do you have a favorite entity to sue? Right now, we have a lot of cases against Pharma companies.

What is Pharma doing? They are not always forthright when there are adverse effects, and sales representatives are promoting the drug for off-label uses. The most nefarious is kick-backs to doctors in various forms.

What was your best job? Teaching. I taught more than 5,000 UCLA undergrads.

What was your worst job? Mowing the lawn.

Your best personality trait? My sense of humor. I try not to take myself too seriously.

If you were handed 10 million dollars tomorrow, what would you do with it? I would make a substantial donation to the American Civil Liberties Union.

Who is on your playlist? Adele. I was crushing on “Someone Like You.”

What is your best job? Teaching. I taught more than 5,000 UCLA undergrads.

What is your favorite meal and where? Roasted pork at Versailles.

What is your favorite vacation spot? Rio de Janeiro. If you’ve ever been to Carnival there, you would never leave. It’s amazing.

If you could live anywhere in the world, where would it be? Los Angeles. There’s a feeling of freedom here—it’s about the imagination.

What is your favorite movie? Godfather II, Raising Arizona, Groundhog Day.

Who is your favorite world leader? Lyndon Johnson. He was a very flawed man but he uniquely was able to get the Civil Rights Act passed. He did the right thing.

What is the one thing you would like to change in the world? I would encourage everyone to feel that we are all in this together.
Pot-Protective Employment Laws Loom in 2019

**MANY STATES NOW LEGALIZE** the use of medical and recreational cannabis—marijuana—as California does. More than a dozen states have gone a step further by forbidding employers from discriminating against employees’ unauthorized uses of medical cannabis. California—usually at the forefront of employee-protective legislation—lags behind here. California law currently permits employers to deny employment to cannabis users, even when the user is authorized to use cannabis for medical purposes. That could soon change.

Proposed California legislation AB 2069, which died in committee this year, would have prohibited employers from discriminating against an individual because the individual is a qualified patient using cannabis or because such an individual has tested positive for cannabis. A similar bill is expected to become law next year, when pot-friendly California legislators continue to hold the reins of power with an even more liberal governor. Various issues are anticipated to arise.

First, how could California require employers to tolerate applicants and employees using a drug that is still illegal under federal law? In 1970, Congress passed the Controlled Substances Act (CSA) to ban or regulate certain controlled substances. Under the CSA’s classification system, cannabis is a Schedule I drug, defined as illegal on the premise that it has no accepted medical use and has a high potential for abuse. Some employers, defending lawsuits in pot-protective states, have cited the CSA to argue that the cannabis discrimination law being invoked against them is preempted by federal law.

Judicial responses to the preemption argument have been mixed, with the recent trend going against preemption. The CSA is not a strongly preemptive law like other federal laws, such as ERISA. Rather, the CSA preempts state law only to the extent that “there is a positive conflict between the CSA and that State law so that the two cannot consistently stand together.”

In a 2017 disability discrimination case, a Hawaii federal district court ruled that the CSA preempts Hawaii’s cannabis law. The court held that an employer did not need to accommodate an employee’s medical cannabis use because all cannabis—medical or not—remains prohibited under federal law. A 2017 decision by a Connecticut federal district court, however, held that the CSA did not preempt a Connecticut statute that protects employees and job applicants from employment discrimination based on medical marijuana use because the CSA does not specifically regulate the employment relationship.

In terms of current California law, the state took the lead in protecting medical cannabis use in 1996, when voters enacted the Compassionate Use Act, because the Fair Employment and Housing Act (FEHA) does not require employers to accommodate illegal drug use, and cannabis, even medical cannabis, remains illegal under federal law.

Further, in every state, employers remain free to discipline employees whenever a drug—prescribed or not—impairs job performance. The special problem with cannabis, of course, is that a user can test positive for drug use even after the impairing effects of the drug have dissipated.

What’s on the horizon for 2019? In February 2018, California legislators introduced AB 2069, which would have amended the FEHA to create a new protected category: medical cannabis users. The bill generally would have protected these users except when they are impaired on employer premises or when employing them would cause the employer to lose benefits under federal law. AB 2069 went up in smoke when it failed to advance out of the Appropriations Committee this past legislative session. However, the bill was held under submission, indicating that it could be reintroduced next year.

If passed, the new pot-protective legislation in 2019 predictably could raise a series of issues for California employers, including:

- To which limited categories of employees (e.g., truck drivers regulated by the U.S. Department of Transportation) will federal preemption of state cannabis law apply?
- Will California employers be required to accommodate employees who, because they use medical cannabis, request adjusted work schedules?
- Will the heightened remedies available under the FEHA cause some employers to restrict drug-testing programs that currently are subject to challenge only under California’s right to privacy?
- Will there be special carve-outs for safety-sensitive job positions?

5 HEALTH & SAFETY CODE §§11362.5, 11362.5(a).
6 HEALTH & SAFETY CODE §§11362.45(f).

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Crafting Separate Statements in Motions for Summary Judgment

CIVIL LITIGATORS ARE FAMILIAR WITH the requirement that a motion for summary judgment or summary adjudication be accompanied by a separate statement of undisputed material facts, but that requirement did not always exist. It arose 35 years ago, when Code of Civil Procedure Section 437c was amended to require “that the parties submit separate statements itemizing material facts which they contend are undisputed or disputed, as the case may be, supported by specific reference to the evidence which either establishes or contradicts each fact.” One law and motion judge predicted at the time that “[t]hese separate statements facilitate review of the record by the court and, if properly prepared, should help prevent the moving party from overlooking any facts or evidence necessary to support its application.” He went on to explain that “[i]f prepared correctly, the separate statement of the moving party should recite the assertedly undisputed facts from which it follows that the party is entitled to the requested adjudication.”

As this jurist observed, the separate statement of undisputed material facts can and should be a highly useful document—both for the litigants and the court—if properly prepared. However, in the years following the amendment of Section 437c, the inability to prepare appropriate separate statements became so widespread and of such widely acknowledged mutual frustration to the bench and the bar that it led another jurist to proclaim rather defensively that “[s]eparate statements are required not to satisfy a sadistic urge to torment lawyers.” These conditions have not improved much since then, notwithstanding the amendment of California Rule of Court 3.1350 in 2008 to clarify the requirement. They may even be worse. Indeed, in one well-known 2009 decision, the California Court of Appeal identified a summary judgment motion with a 196-page separate statement setting forth hundreds of facts as “what may well be the most oppressive motion ever presented to a superior court.”

So what is the problem? Are the rules inherently unclear? That does not seem to be the issue. After all, the 2008 amendments to the Rules of Court added not only written instructions for, but pictorial illustrations of, how to prepare separate statements supporting and opposing summary judgment, and the exemplars provided are easy to follow.

The real issue does not seem to be the rules’ burdensome technical requirements, bad faith of the parties, or even counsel’s lack of industry. Instead, it appears to be that the difficulty of applying the rules varies directly with the complexity of the motion. The more complex the legal and factual framework surrounding the motion, the more difficulty lawyers will tend to have in framing at an appropriate level of generality what is, and what is not, a material fact. This difficulty, as well as lawyers’ tendency to fear inadvertently waiving something by failing to include it, leads to separate statements that improperly characterize as “material facts” scores, or even hundreds, of trivial and incidental facts, pieces of evidentiary material, and legal arguments and conclusions. This proliferation of ostensibly “material” facts can make it easier for an opposing party to dispute facts and create the appearance of triable issues.

This need not happen. There are hundreds of published cases on summary judgment. Among those, while straightforward statements of what precisely is and is not “material” for the purpose of summary judgment are unfortunately few and far between, they do exist. Perhaps the clearest statement comes from a pair of 1999 California Court of Appeal cases, which explain: “To be ‘material’ for purposes of a summary judgment proceeding, a fact must relate to some claim or defense in issue under the pleadings, and it must also be essential to the judgment in some way.” These two cases are cited in Aguilar v. Atlantic Richfield Company, the California Supreme Court’s 2001 opus on summary judgment. Aguilar itself suggests that a fact is material when it “is necessary under the pleadings and, ultimately, the law[.]”

Under this standard, a fact is material—and thus should be included in a moving party’s separate statement—when its existence or nonexistence is potentially outcome-determinative of a cause of action, affirmative defense, claim of damage, or issue of duty that has been pleaded by a party. That is, if the fact cannot be proven, the claim or defense that rests on it must necessarily fail. Generally, these facts should be framed at the level of “the ultimate facts which constitute the cause of action” itself. Thus, the “material facts” in a separate statement should generally track the elements of a claim, stated in the factual context in which they are set out in the pleadings. Then the evidentiary facts and the actual evidence in which they are established should be cited as the “supporting evidence.”

With that standard in mind, it is clear what should not be listed as a “material fact.” So-called “subsidiary” or “evidentiary”

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facts that do not rise to the level of materiality should not appear as material facts. Nor, except in limited circumstances, should recitations of procedural events in the litigation. Background facts and individual pieces of evidence—such as deposition testimony or interrogatory responses—should not be listed as material facts. Legal arguments are not facts, much less material ones, nor are conclusions of law.

This last category can prove difficult, however. That is because, like a legal conclusion, “an ultimate fact usually, if not always, involves one or more conclusions.” Consequently, “[t]he distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree.” The difference is historical, and frankly, somewhat formalistic. But in practical application, so long as the inferences to be drawn are commonsensical and essentially framed by the underlying facts of the case, some implication of legal definitions should not preclude their treatment as material facts. For instance, that a party acted “intentionally” can often be a material fact for summary judgment purposes, notwithstanding jurisprudential nuance over the meaning of “intentional.” In any event, it is clear that juries can draw only factual, not legal, conclusions. A safe way to identify the material facts is to look to the jury instructions and then frame the elements with the factual particulars of the case.

If the standard is properly understood and followed, the number of “undisputed material facts” in a separate statement should be relatively few. The number should certainly be far fewer than appears in the all-too-common separate statement wherein a lawyer simply pastes the recitation of the facts from his or her brief into a table and then makes each sentence an “undisputed material fact.” Indeed, a defense-side summary judgment motion asserting that the plaintiff cannot establish an element of action often has only a single, undisputed material fact at issue. A plaintiff’s motion or a defense motion on an affirmative defense should generally have roughly the same number of material facts as the number of elements of the cause of action or defense.

By way of example, a claim for the libel of a public figure can be presumed. The Plaintiff, Polly, a well-known actress, claims that the defendant, Daisy, her recently terminated assistant, e-mailed Benny Blogger and falsely claimed that Polly was arrested for driving under the influence. The generic elements of libel are: 1) Daisy sent an e-mail to Benny, 2) Benny reasonably understood that the e-mail was about Polly, 3) a reasonable person would understand the statement to mean that Polly had committed a crime, 4) Polly had never been arrested for a DUI, and 5) Daisy knew that the statement was false because the incident never happened.

Daisy moves for summary judgment on the ground that the arrest actually occurred and, therefore, her statement was true. The event was recorded on video, arrest records show Daisy was detained for driving under the influence, and Polly admitted to her publicist that the arrest did, in fact, occur. Now, of course, when Daisy’s able attorneys draft their motion, they will likely set out the whole story in their brief to provide context for the dispute. They will present and describe the evidence that undisputedly shows that the arrest occurred. But what they should not do is recite the evidence or the so-called “subsidiary” facts as separate, undisputed material facts in their separate statement. The evidentiary facts and supporting evidence are not dispositive of the claim—they are not material.

For instance, if there was no video recording of the arrest, it does not automatically follow that the arrest never happened. That fact, while clearly relevant, is not material at the proper level of generality. Thus, while there might be a great deal of evidence and factual detail in support of it, there remains exactly one undisputed material fact that should be set out in the defendant’s separate statement. Following the format required by Rule of Court 3.1350(b), the left column of a moving defendant’s separate statement would appear as shown in Example A.

This will not always be easy. The law is rife with amorphous standards and fact-heavy multifactor or balancing tests that can make it difficult to express case-specific fact issues at an appropriate level of mate-

Example A.

<table>
<thead>
<tr>
<th>Moving Party’s Undisputed Material Facts and Evidence in Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Undisputed Fact #1. Defendant’s statement that Plaintiff was arrested for driving under the influence was true. Smith Decl. En. 1 (video); En. 2 (arrest records); En. 3 (Publicist Depo.) at 34:12-25 (“Polly told me that she was very drunk that night and was detained by the police after she was pulled over.”).</td>
</tr>
</tbody>
</table>

Example B.

<table>
<thead>
<tr>
<th>Moving Party’s Undisputed Material Facts and Evidence in Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fact # 1. At the time the contract was entered, Plaintiff was Defendant’s attorney. Evidence.</td>
</tr>
<tr>
<td>- There was a retainer agreement. Smith Decl. En. 1.</td>
</tr>
<tr>
<td>- Plaintiff defended Defendant at a deposition in 2004. See Smith Decl. En. 2 (deposition transcript).</td>
</tr>
<tr>
<td>- Plaintiff drafted 25 contracts for Defendant over a two-year period. Smith Decl. ¶ 4 &amp; Exs. 3-25.</td>
</tr>
<tr>
<td>- Plaintiff wrote a letter in 2005 wherein he described himself as Defendant’s general counsel. Smith Decl. En. 26.</td>
</tr>
</tbody>
</table>
butted, would require any reasonable trier of fact to infer that the material fact has been established under the applicable burden of proof.\textsuperscript{33}

For example, a plaintiff’s status as the defendant’s attorney could be an affirmative defense to a claim for breach of oral contract because certain attorney-client contracts need to be in writing.\textsuperscript{34} For that defense, the attorney-client relationship is the ultimate material fact in issue. There are many ways of showing an attorney-client relationship, however, with no individual way necessarily required to meet the defendants’ burden of substantiating the material fact in issue.\textsuperscript{35} In this case, it may prove helpful to set up the separate statement as in Example B.

By framing the facts this way, the moving party gives the court a clearer sense of the factual question to be decided. While it may sometimes appear difficult to properly structure and format a separate statement that correctly identifies the actual material facts in dispute and clearly lines up the evidence in support of and against those facts, only by taking the effort to do so can one make the separate statement the “convenient and expeditious vehicle”\textsuperscript{36} for the trial court that it was meant to be.

\textsuperscript{1} Rules governing summary judgment and summary adjudication are material the same with respect to the facts required in a separate statement. For ease of reference, hereinafter, references to summary judgment will also refer to summary adjudication.


\textsuperscript{3} Pollak, \textit{supra} note 2, at 421.

\textsuperscript{4} Id at 421 n.8; see also Collins v. Hertz Corp., 144 Cal. App. 4th 64, 74 (2006) (noting that the separate statement is supposed to be a “convenient and expeditious vehicle permitting the trial court to hone in on the truly disputed facts.”).


\textsuperscript{6} See Cal. R. Ct. 3.1350.


\textsuperscript{8} Cal. R. Ct. 3.1350(h).

\textsuperscript{9} This fear of waiver is likely driven by what is called “the Golden Rule” of summary judgment and adjudication, viz., “all material facts must be set forth in the separate statement,” and, “if it is not set forth in the separate statement, it does not exist.” Garcin, 231 Cal. App. 3d at 337 (emphasis in original).

\textsuperscript{10} See Nazir, 178 Cal. App. 4th at 252 (quoting \textit{Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial}, §10:951.1 (2009) for the proposition that “the separate statement effectively concedes the materiality of whatever facts are included. Thus, if a triable issue is raised as to any of the facts in your separate statement, the motion must be denied.”).


\textsuperscript{13} Id.

\textsuperscript{14} Cal. R. Ct. 3.1350(d).

\textsuperscript{15} See \textit{Code Civ. Proc.} §437c(a), (p).


\textsuperscript{17} See \textit{Code Civ. Proc.} §437c(b)(1); see also Teselle, 173 Cal. App. 4th at 172 (“The distinction between a material fact and its supporting evidence lies in the difference between an ultimate fact, an element of a cause of action, and an evidentiary fact which supports the existence of the element.”).

\textsuperscript{18} If the statute of limitations is at issue, the timing of pleadings could be material. Or, if the proof of a material fact is based on judicial estoppel, it is conceivable that a party’s prior assertion of that fact could be material.


\textsuperscript{21} For those more academically inclined, the epistemology of the distinction was explored extensively by the California Supreme Court in 1886. See Levins v. Rovegno, 71 Cal. 273, 275–76 (1886).

\textsuperscript{22} See Perkins v. Superior Ct., 117 Cal. App. 3d 1, 6 (1981).


\textsuperscript{25} See \textit{Code Civ. Proc.} §437c(p)(2) (defendant meets its burden if it “has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established”); see, e.g., Andalon v. Superior Ct., 162 Cal. App. 3d 600, 605 (1984) (resolving issues of law that turned on a single undisputed material fact).

\textsuperscript{26} See \textit{Code Civ. Proc.} §437c(p)(1) (plaintiff meets its burden on motion if it “has proved each element of the cause of action entitled the party to a judgment on that cause of action.”).

\textsuperscript{27} See CACI 1700.

\textsuperscript{28} The Rules of Court require a “two-column format.” See Cal. R. Ct. 3.1350(d)(3), (h). The right-hand column of the moving party’s statement, however, only provides space for the nonmoving party to respond.

\textsuperscript{29} See, e.g., Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 185 (1999).


\textsuperscript{32} See, e.g., Hayes v. San Diego, 57 Cal. 4th 622, 632 (2013).


\textsuperscript{34} See, e.g., Arnall v. Superior Ct., 190 Cal. App. 4th 360, 373-74, App. 3d 944, 992 (2010).


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The Internet is filled with news reporting on digital assets (cryptocurrencies such as Bitcoin, Ethereum, Ripple, and many others). What does this burgeoning market mean for California attorneys considering accepting cryptocurrency as compensation for legal services? California’s new ethics rules offer some guidance. Counsel likely may accept payments in the form of cryptocurrency so long as counsel adjusts the law firm’s trust accounting procedures to comply with the requirements of the State Bar of California and also track, protect, and manage digital asset deposits and payments.

Digital assets—including cryptocurrencies—are Internet-based intangible assets that can be used to transfer value between and among parties. Digital assets exist solely within digital environments. They are self-contained collections of binary data, composed exclusively of numeric values of zero or one. “Digital tokens,” such as cryptocurrencies, are one example. Cryptocurrency has commercial utility because digital assets are uniquely identifiable (they can be counted and classified) and generally have value attributed to them, which supports use in commercial transactions.

The intrinsic monetary value of cryptocurrency is its immutable entry on a public ledger (the “blockchain”). These fundamental aspects are the primary reason that entities, e.g., law firms and their clients, acquire and hold cryptocurrency. The most recognized cryptocurrency is the digital token known as Bitcoin.

Cryptocurrency uses cryptography (a form of encoding) to authenticate transactions. Cryptocurrency has no generally accepted physical presence, and no central authority administers the currency, thus it is not backed by any government and is not legal tender in any jurisdiction. It also is not issued by or redeemable at most U.S. financial institutions. Cryptocurrency has value only because other individuals agree that it does. The authenticity data of a particular cryptocurrency or transaction involving cryptocurrency exists on the blockchain.

Each owner of cryptocurrency has a unique “public key,” which is cryptographically linked to the owner’s “private key.” Private keys are always kept secret, for they are how cryptocurrency transactions are mathematically “signed” and transferred. Tracking these keys is cumbersome, so cryptocurrency owners use software (a “wallet”) to manage their public and private keys. These programs exist on personal computers, smartphones, or in the cloud.

Every cryptocurrency transaction is identified by the unique, individual public key and recorded on the
blockchain. These transactions generally take a few minutes to complete. Once written to the blockchain, the transaction cannot be reversed.

Although linking a specific public key to an individual or law firm is not easy, it can be done. For this reason, counsel’s ethical obligations of confidentiality to the client are implicated.

Counsel likely may ethically accept cryptocurrency as compensation for legal services so long as counsel understands the technology of digital assets and handles the technology proficiently.

**Bitcoin Merchant Service Providers**

Some attorneys who accept Bitcoin as payment for legal services may want to rely on a Bitcoin merchant service provider (BMSP) to track tax accounting and record-keeping obligations of confidentiality to the client are implicated.

Counsel likely may ethically accept cryptocurrency as compensation for legal services so long as counsel understands the technology of digital assets and handles the technology proficiently.

**Safeguarding Blockchain Confidences**

California-licensed attorneys are under an overriding duty to protect client confidences, and should feel just as protective of the confidentiality of counsel’s own work product. Financial information, however, is necessarily exposed on the blockchain—this transparency is an attractive and fundamental aspect of cryptocurrency. This aspect of accepting cryptocurrency payments nevertheless highlights the issue of protecting client confidences in the context of the attorney-client relationship.

Public keys facilitate cryptocurrency transfers among online accounts and are visible on the blockchain. When counsel initiates a transaction, a unique public key–private key set is created. These keys are the backbone of cryptocurrency security. Only the account-holder (counsel) knows the private key that authorizes transactions. If counsel loses a private key, the cryptocurrency is lost. Cryptocurrency transactions mutually reveal public online addresses to participants (in a manner similar to bank account numbers).

Once the transaction is approved, funds move to the payee’s public address (a hashed version of a payee’s public key). This transaction is communicated to the blockchain, where individuals at computers (“distributed nodes”) confirm the validity of the transaction, finalize it, and record it on the blockchain. Transactions recorded on the blockchain are viewable on the Internet.

Similarly, if counsel refunds cryptocurrency via the blockchain, the public keys are apparent to all visitors to the blockchain. Amounts of cryptocurrency moving among parties are readily ascertainable, but the names of the parties participating in the transaction and the work performed by counsel are not directly revealed on the blockchain.

Counsel should always examine the privacy protections that the BMSP (if one is in place) uses as part of the cryptocurrency transactions. Counsel should consider what information the BMSP is demanding regarding counsel’s client and what practices regarding collecting and disclosing personal information it maintains about counsel’s clients. Counsel should closely examine and share with the client the BMSP’s privacy practices.

Counsel should include appropriate language in the retainer agreement to adequately inform clients regarding the processes and risks of transacting business using cryptocurrency. The State Bar of California Standing Committee on Professional Responsibility and Conduct in Formal Opinion No. 2010-179 considered confidentiality and competence when counsel manipulate client data via electronic technology. Counsel must protect at “every peril” clients’ confidential information, so the Bar focused on what is reasonable under the circumstances.

Language in the retainer agreements of law firms that accept payment for legal services in cryptocurrency should be reasonably complete, accurate, and understandable to a reasonable client regarding the law firm’s cryptocurrency payment transactions.

**Avoiding Unconscionable Fees**

Counsel may accept payment for legal services via cryptocurrency so long as the fee charged to the client pays is not unconscionable or otherwise improper. An unconscionable fee is one that is “so exorbitant and wholly disproportionate to the services performed as to shock the conscience.”

As of November 1, 2018, new ethics Rule 1.5 (Fees for Legal Services), generally succeeding former Rule 4-200, states:

(a) A lawyer shall not make an agreement for, charge, or collect an unconscionable or illegal fee. (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events.

Fee agreements must be reasonable and written in a way that does not discourage clients from asserting their rights against
1. Accepting cryptocurrency for legal services is per se unethical because cryptocurrency is not embodied in tangible tokens.
   - True.
   - False.

2. Attorneys cannot ethically accept cryptocurrency because commercial transactions involving compensation for legal services must always be completed using currency backed by a government.
   - True.
   - False.

3. Cryptocurrency has value only because financial regulators all agree that it does.
   - True.
   - False.

4. Cryptocurrency transactions recorded on the blockchain do not implicate counsel's ethical duty to maintain client confidences because transactions on the blockchain are private and confidential.
   - True.
   - False.

5. “Private keys,” the mechanism by which cryptocurrency transactions are “signed” and completed, necessarily prevent counsel from accidentally revealing client confidences.
   - True.
   - False.

6. Cryptocurrency users, including lawyers and their clients, should assume that cryptocurrency transactions are publicly viewable, potentially implicating protecting client confidences.
   - True.
   - False.

7. Financial information is exposed on the blockchain, which can implicate counsel’s ethical obligation to protect client confidences.
   - True.
   - False.

8. It is unethical for counsel’s retainer agreement to include clauses addressing issues raised by counsel’s acceptance of cryptocurrency as compensation for legal services.
   - True.
   - False.

9. Counsel is not ethically prohibited from accepting payment in cryptocurrency for legal services.
   - True.
   - False.

10. If counsel and client need to distribute a single bitcoin to get counsel compensated for legal services, client and counsel could, for ethics rules purposes, become co-owners of a valuable asset.
    - True.
    - False.

11. Barter as payment for legal services requires that a client use a currency recognized by the U.S. government.
    - True.
    - False.

12. Counsel who accept cryptocurrency as compensation for legal services must be able to process refunds for clients.
    - True.
    - False.

13. When the cryptocurrency that counsel has accepted as compensation for legal services becomes worthless during the course of the representation, counsel could be in a posture of conflict with the client.
    - True.
    - False.

14. Cryptocurrency is easily deposited into traditional client trust accounts.
    - True.
    - False.

15. Attorneys who accept property as compensation for legal services must be able to process refunds for clients.
    - True.
    - False.

16. If counsel holds client property in trust as compensation for legal services becomes worthless during the course of the representation, counsel could be in a posture of conflict with the client.
    - True.
    - False.

17. Because cryptocurrency is not recognized as currency by the Internal Revenue Service, it is not taxable.
    - True.
    - False.

18. Cryptocurrency markets are subject to such significant regulatory uncertainty that attorneys cannot ethically use it in their practices.
    - True.
    - False.

19. Law enforcement sometimes monitors cryptocurrency transactions for illegal activity.
    - True.
    - False.

20. The regulatory landscape for digital assets, including guidelines on how lawyers can ethically manage commercial transactions using cryptocurrency, is likely to change in the near future.
    - True.
    - False.
counsel. Counsel must demonstrate the propriety of counsel’s fees.

The focus of the analysis is comparison of fees charged to value received; the experience, reputation, and ability of the attorney; and the informed consent of the client to the fee. High fees are not synonymous with “unconscionable” fees, but high fees may be “unreasonable.”

Reasonable Fee

Relevant to the issue of volatility of the value of cryptocurrency, a “reasonable” fee may never exceed the contract rate. As with many contract terms, the relevant exchange rate date is negotiable, but the resulting agreement must not cause an unconscionable or illegal result. Counsel may not realize a benefit for failing to comply with the law and allowing a fee greater than the amount the attorney negotiated and expected to receive.

Although a contract amount may be reasonable, the fee may, retrospectively, be found “unreasonable” based on the services performed. Courts may refuse to enforce these agreements, or the fees may be reduced.

Although digital asset markets are known for their value volatility, the issues can be addressed via the ordinary rules of contract, and, if needed, the application of new Rule 1.5. Counsel and client can agree on which day they value the asset, and for how long that valuation applies, as memorialized in their agreement. They can also agree to a range of value for the purposes of construing their agreement.

If the volatility of the asset, at the relevant time, is extreme enough to take the payment terms into the realm of unreasonable or unconscionable fees, traditional ethics rules of analysis can be applied, despite the novel aspects of payment via cryptocurrency. Nothing in the cryptocurrency markets is inherently antithetical to counsel’s ethically accepting cryptocurrency as payment, assuming the issues of volatility are addressed ethically in the retainer agreement.

Improper Business Arrangement

Counsel may accept cryptocurrency as compensation for legal services so long as he or she guards against accidentally entering into an improper business arrangement with the client, either by a direct barter arrangement with a client or via a third party expected to receive a portion of the legal fees or joint ownership of a single digital asset that is not easily divisible. Some digital assets—especially cryptocurrency—are highly valued in comparison with dollars and not easily divisible. If counsel and client need to distribute a single bitcoin, for example, it could be split, resulting in client and counsel as co-owners of a single asset, each owning a fraction, arguably making them functionally partners in a business arrangement.

In situations in which attorney and client jointly own a portion of the same cryptocurrency coin or other digital assets, ethics issues are triggered. The fair value of counsel’s legal services may not be the exact value of a single unit of, or even multiple units of, the market value of the digital asset in play. If a client transferred only a fraction of a digital asset in exchange for legal services, counsel would co-own the digital asset with the nonattorney client, possibly implicating the rules against splitting legal services fees with a nonlawyer and entering into a business transaction with a client.

For example, a single bitcoin has recently been valued at upwards of $6,500. The reasonable value of counsel’s services on the relevant contract date is unlikely to be an exact multiple of $6,500. If a fraction of a bitcoin is transferred as compensation for counsel’s services, counsel likely co-owns that bitcoin with the client. This could trigger counsel’s ownership interest in jointly owned property, which is adverse to a client; this implicates new Rule 1.8.1.

Rule 1.8.1 prohibits counsel from entering into business transactions with clients, or knowingly acquiring an ownership, possessor, security, or other pecuniary interest adverse to a client. Counsel could become a business partner of a nonlawyer through co-ownership of a valuable asset.

Counsel and client jointly own a portion of the same cryptocurrency coin or other digital assets, ethics issues are triggered. The fair value of counsel’s legal services may not be the exact value of a single unit of, or even multiple units of, the market value of the digital asset in play. If a client transferred only a fraction of a digital asset in exchange for legal services, counsel would co-own the digital asset with the nonattorney client, possibly implicating the rules against splitting legal services fees with a nonlawyer and entering into a business transaction with a client.

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New Rule 5.4 (b) prohibits lawyers from forming partnerships or other business entities with nonlawyers if any of the activities are the practice of law. Counsel may accept cryptocurrency as compensation for legal services so long as he or she guards against accidentally entering into an improper business arrangement with the client, either by a direct barter arrangement with a client or via a third party expected to receive a portion of the legal fees or joint ownership of a single digital asset that is not easily divisible. Some digital assets—especially cryptocurrency—are highly valued in comparison with dollars and not easily divisible. If
currency; it is a contract by which parties trade for value and do not pay with money. Bartering is trading goods or services directly for other goods or services, without using money or similar unit of account or medium of exchange. Under these circumstances barter contemplates an agreement in which counsel provides legal service and the client provides items of value, not recognized as currency, in place of a fee. This is expected to include cryptocurrency. In the context of attorney and client, bartering agreements are not considered standard commercial transactions, which would be exempt from the requirements of ABA Rule 1.8(a) and, presumably, the new California rule 1.8.1.

ABA Model Rule 1.8(a), equivalent to new California rule 1.8.1, addresses bartering for legal fees as a business transaction with a client. The rule applies a “reasonableness” standard, which means counsel should consider a thorough discussion with the client, including a suggestion that the client seek advice from another lawyer and obtain written client consent.

Generally, California attorneys rendering legal services may not participate in business or financial transactions with clients; standard commercial transactions, separate from legal services, are the exception. Attorney compensation via barter implicates consideration of whether this type of payment is a “standard commercial transaction” under the Restatement (Third) of the Law Governing Lawyers. Payment for legal services via barter involves rendering legal services, so it falls outside of the safe harbor of standard commercial transactions. Therefore, lawyers and law firms accepting digital assets, instead of a traditional fee in the form of some fiat currency, must comply with Rule 1.8.1.

Considering the prohibitions on counsel’s entering into a business arrangement with clients, based on digital asset barter activity, counsel should discuss with the client and include verbiage in the retainer acknowledging the possible volatility of the asset and ensure that the client had a chance to learn the value range of this volatile digital asset on some realistic basis.

Refunds to Clients via Digital Assets
Counsel may accept digital assets in exchange for legal services so long as he or she has adequate processes in place allowing timely refunds of unearned sums. These provisions should be included in the retainer agreement signed by the client. The terms should address whether refunds to the client are contemplated via traditional fiat currency or via a designated cryptocurrency. If by cryptocurrency counsel should delineate the date of valuation to address possible volatility in the market between the time the client paid the attorney via digital assets and the date the refund would need to be made, and in what form.

The discussion also should address refundable retainers and return of unearned fees held in the trust account. Issues include how counsel anticipates determining the exchange rate and how counsel discloses this data to the client. Counsel should disclose how the exchange rate applied to the client’s cryptocurrency transaction is calculated and what if any fees are involved. This information should be discussed with the client, be disclosed in writing, and be fair.

Devaluation of Cryptocurrency
Counsel may ethically accept cryptocurrency from clients as legal fees, but counsel must make arrangements to address the possibility that the digital asset may become worthless during the representation. When the digital asset becomes worthless, counsel is in a posture of conflict with the client. In situations in which cryptocurrency could drop precipitously in value, counsel should keep in mind how this could test an advocate’s duties of competence and loyalty.

When counsel accepts as compensation an item of property, rather than a govern-
ment-regulated legal currency, counsel shoulders the risk of extreme swings in value. As a result, counsel could eventually be providing legal services for very little compensation. Nevertheless, Rule 1.1 directs that lawyers shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence. This includes the mental and emotional ability necessary for the performance of such service.

If counsel accepts cryptocurrency as compensation, counsel should understand and accept at the start of the representation that significant volatility in value could occur. If the asset’s value drops sufficiently, this could create a reluctance by some businesses to expend further resources on the client’s behalf. In this type of situation in the representation context, counsel’s and clients’ interests could diverge. Counsel should be especially sensitive to these potential conflicts in the context of cryptocurrency compensation analyses and client-informed consent. To address these potential ethics challenges, counsel should factor this possibility into the firm’s business analysis when deciding whether to accept cryptocurrency. Counsel should provide a clear, documented explanation to clients regarding the possibility of this volatility, with reasonable assurances regarding competence and loyalty. Therefore, counsel should discuss the risks presented by cryptocurrency’s price volatility with the client before counsel agrees to accept it as payment for legal representation. If the client seems to be unable to fully grasp the risks associated with cryptocurrency, counsel must educate the client to ensure that the client gives informed consent to the fee arrangement, and this discussion should be memorialized in the retainer.

**Trust Accounting Procedures**

Counsel may accept payments in cryptocurrency so long as counsel adjusts the law firm’s trust accounting procedures to comply with the requirements of the State Bar of California and to track, protect, and manage cryptocurrency deposits and payments. Safekeeping of cryptocurrency presents unique technical challenges that counsel should understand before holding cryptocurrency in trust for clients. New Rule 1.1 requires that counsel must perform legal services with “competence,” meaning the learning and skill, and mental, emotional, and physical ability reasonably necessary to render legal services.

In Ethics Opinion 2010-179, the State Bar of California directed that counsel educate themselves about security issues before transmitting or storing confidential client information. A similar duty can be expected when transmitting or storing client’s cryptocurrency.

However, cryptocurrency, as property rather than currency, is not easily deposited into traditional trust accounts. Under Rule 1.15, attorneys must clearly label client property and maintain it in a “place of safekeeping.” Regarding client property held in trust, counsel must keep a record of: 1) each item of property held, 2) the person on whose behalf the security or property is held, 3) the date of receipt of the security or property, 4) the date of distribution, and 5) the person to whom distributed. Cryptocurrency assets might be memorialized on an external (thumb) drive, for example. Proper safekeeping might include deactivating the “delete” function on this external drive, so no cryptocurrency value could be accidentally deleted off the memory stick. The thumb drive would then need to be labelled, placed in a properly climate-controlled environment, and logged into the same location in which other property is logged. A duplicate drive might also be created, labelled “copy,” and maintained in a different location.

Another alternative is for the law firm to establish a separate digital wallet for each client making advance payments via cryptocurrency. To better protect crypto-
currency client trust accounts, counsel can enable multifactor authentications on the accounts, securely maintain private keys, and regularly back up data.

**Tracking for Tax Purposes**

While counsel likely may ethically accept cryptocurrency as payment for legal services, counsel also must competently track this income stream for tax payment purposes. Counsel may not fail to pay taxes on the equivalent value of cryptocurrency based on a mistaken belief that these assets are outside of ordinary tax bill calculations.

According to IRS guidance, for federal tax purposes, cryptocurrency is property and not foreign currency. For tax purposes, cryptocurrency should be treated as property, so the general tax principles that apply to property transactions govern the tax treatment of cryptocurrency.

Generally, when counsel acquire property, counsel must record the fair market value of the property (presumably, the value at the time of recordation). This amount is the owner’s “basis” in the property. If the asset is later exchanged and the fair market value has increased, the owner has a taxable gain. If the sale price is less than the taxpayer’s basis, the taxpayer realizes a loss. Regarding cryptocurrency, if counsel accepts cryptocurrency valued at $500, then buys a good or service with that same cryptocurrency when the value has increased to $550, counsel has a $50 gain.

If counsel accepts numerous cryptocurrencies as part of multiple transactions each month, and the cryptocurrency’s value fluctuates during the month that counsel is holding the cryptocurrency, counsel’s basis in each individual cryptocurrency will vary, depending on the value at the time of each transaction. Also, when counsel cashes out some cryptocurrency for dollars, counsel will have to decide both how much cryptocurrency to sell and which particular cryptocurrency to cash in. Exchanging a particular cryptocurrency and not another one held by the law firm directly affects the size of the taxable gain or reportable loss.

All of the law firm’s cryptocurrency must be valued at its “fair market value,” according to the IRS, which can be based on prices listed at the online exchanges. This does not solve the problem for law firms, however, because prices can fluctuate significantly and daily.

The volume of record-keeping to track the basis in each individual cryptocurrency or part of a cryptocurrency and compute gains and losses makes trade using this type of barter impractical for most law firms. Nevertheless, automated procedures to calculate exchanges simplify record keeping, and third-party providers who offer these services can help protect lawyers from disadvantageous audit results.

Again, California practitioners likely may ethically accept cryptocurrency as compensation for legal services, so long as they understand and address all the specific ethics concerns raised by cryptocurrency transactions. Areas of special concern include technological competence in understanding cryptocurrency and its transfer, sufficient terms in the retainer agreement regarding cryptocurrency payment transactions, avoiding unconscionable fees, providing refunds (if necessary), protecting confidences, sufficient trust accounting procedures for payments via cryptocurrency, and payment of taxes.

Of special note is the fact that cryptocurrencies are subject to significant regulatory uncertainty. Law enforcement in some jurisdictions study cryptocurrency transactions for signs of possible illegal activity, such as money laundering or sales of contraband. Lawmakers are still working on crafting regulations to govern these assets, so practitioners accepting cryptocurrency as payment should be sensitive to the fact that the regulatory landscape is likely subject to change in the near future.

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2. Id.
5. See sample attorney-client fee agreement, available at http://www.calbar.ca.gov/Portals/0/documents/nfa/2015SampleFeeAgreements-2070115_r.pdf (fee agreement, hourly litigation, par. 6, p. 3), which provides State Bar of California sample retainer language (last viewed Oct. 23, 2018).
9. BUS. & PROF. CODE § 6068(e)(1); In Re Jordan 12 Cal. 3d 573, 380 (1974).
ARE cryptocurrencies a dangerous bubble set to explode or the future of financial technology? Should they be regulated and enforced as property, a security, a commodity, or a virtual convertible currency? Presiding at the Berkshire Hathaway 2018 annual shareholder meeting, famed investor and CEO Warren Buffet described the cryptocurrency Bitcoin as “probably rat poison squared.”1 Charles Munger, Berkshire’s vice-chairman, added that cryptocurrencies are “just dementia.”2 Darren Marble, CEO of CrowdfundX, countered: “Years from now, when the dust settles, Warren Buffett’s miss on Bitcoin will be the biggest miss of his career…. How could someone who doesn’t use email possibly appreciate Bitcoin? They can’t.”3

With cryptocurrency prices soaring and falling tremendously since 2017 and new virtual currencies, blockchain-based companies, and Initial Coin Offerings (ICOs) coming out on a weekly basis, how will the “crypto-sheriffs” police this new financial Wild West? In addition to the Internal Revenue Service (IRS), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), and state regulators have each claimed authority to regulate and enforce a part of the “crypto-frontier,” at times creating overlapping jurisdiction. Their ability to work together in this fluid environment and to create new rules, regulations, and law enforcement techniques to address the unique aspects of virtual currency will determine whether the Wild West of cryptocurrency enforcement will be won.

How has the SEC’s mission to “protect investors, maintain fair, orderly and efficient markets and facilitate capital formation” intersected with the cryptocurrency world?4 On the one hand, the cryptocurrency world thus far has been a miniscule but growing blip on the SEC’s radar. For instance, there was approximately $4 billion raised in ICOs in 2017 (many ICOs are similar to initial public offerings and operate as a means for blockchain-based businesses to raise funds for new projects by selling digital tokens that confer some value or right to the users).5 In contrast with this $4 billion raise, there were approx-
imately $75 trillion in securities traded annually on U.S. equity markets involving 4,100 exchange-listed public companies with a market capitalization of $31 trillion. Thus, though growing exponentially, the cryptocurrency market comparatively constitutes well less than one percent of the overall financial market.

On the other hand, the SEC realizes it needs to proactively get in front of regulating and enforcing laws dealing with crypto-currencies before the investor public gets overrun with fraudulent, deceptive, and illegal activity. Thus, over the last number of years, the SEC has taken an expansive role of its jurisdiction, viewing the issuance of virtual currencies as “securities” in most instances. In 2013, former SEC Chair Mary Jo White stated: “Regardless of whether an underlying virtual currency is itself a security, interests issued by entities owning virtual securities or providing returns based on assets such as virtual currencies likely would be securities and therefore subject to our regulation.” The SEC concluded that cryptocurrencies constitute “securities,” regardless of how they are labelled, if they fall within the “investment contract” category of securities.

Over 70 years ago, the U.S. Supreme Court in SEC v. W. J. Howey Company defined an “investment contract” as a contract, transaction, or scheme in which 1) a person invests money in a common enterprise, 2) with a reasonable expectation of profits, 3) to be derived solely from the entrepreneurial or managerial efforts of others. The “Howey test” was designed to be “flexible” and “capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.” Simply calling cryptocurrency a “currency” or a “utility token” does not make it a security since the economic realities and substance of transaction, not its form, will control. Under this test, Jay Clayton, the current SEC chair, has publicly stated in numerous settings that all the cryptocurrency offerings he has seen are securities, none of which have been registered and all of which have been traded on unlicensed and unapproved trading platforms. Since July 2017, warnings by the SEC and Chair Clayton to the public have included:

- In July 2017, the SEC issued investor bulletin warnings about ICOs and a Report of Investigation under Section 21(a) of the Securities Exchange Act of 1934 describing an SEC investigation of a decentralized autonomous organization (DAO) and its use of distributed ledger or blockchain technology to sell DAO Tokens, a virtual currency, to raise capital; the SEC determined that DAO Tokens were securities and those who sold them had to comply with federal securities laws.
- In September 2017, the SEC created a new Cyber Unit to focus, among other things, on violations involving distributed ledger technology and ICOs.
- In November 2017, Chair Clayton, speaking at an Institute on Securities Regulation conference said, “I have yet to see an ICO that doesn’t have a sufficient number of hallmarks of a security... There is also a distinct lack of information about many online platforms that list and trade virtual coins or tokens offered and sold in ICOs.”
- In December 2017, Chair Clayton in an official SEC “Statement on Cryptocurrencies and Initial Coin Offerings” warned Main Street investors: “By and large, the structures of [ICOs] that I have seen promoted involve the offer and sale of securities and directly implicate the securities registration requirements and other investor protection provisions of our federal securities laws.”
- In January 2018, Chair Clayton at the Securities Regulation Institute relayed a “simple” and “stern” message to securities lawyers not to help clients structure cryptocurrency offerings with many key features of securities offerings but advise the clients that these products were not securities; he said the SEC staff would be on “high alert” for advice that ran contrary to the “spirit of our securities laws and the professional obligations of the U.S. securities bar.”
- In February 2018, Chair Clayton testified before the Senate Banking, Housing and Urban Affairs Committee, opining: “I believe every ICO I have ever seen is a security.... ICOs that are securities offerings, we should regulate them like we regulate securities offerings. End of story.”
- In March 2018, the SEC’s “Statement on Potentially Unlawful Online Platforms for Trading Digital Assets,” warned investors about unregistered online trading platforms trading virtual currencies and offered a lengthy list of questions investors should ask before trading on such platforms.
- In April 2018, Chair Clayton spoke at Princeton University on “Crytocurrency and Initial Coin Offerings,” noting that while not all ICOs were fraudulent, the SEC must stop the ICO fraudsters in order to help the ICO industry mature overall.
- In May 2018, the SEC set up a fake ICO website—howey-coins.com—complete with phony celebrity promoters that purported to be the “only coin offering that captures the magic of coin trading profits and the excitement and guaranteed returns of the travel industry” on an SEC-compliant exchange registered with the U.S. government. Through this website, the SEC has sought to educate the investing public about the various methods of fraud used in similar offerings.
- In June 2018, William Hinman, director of the SEC’s Division of Corporate Finance, spoke at the Yahoo Finance All Markets Summit: Crypto and reemphasized that central to determining whether cryptocurrency is being sold as a security is whether it is part of an investment to nonusers by promoters to develop the enterprise. However, he made clear that when there is no longer any central enterprise being invested in—as with Bitcoin or Ether—or when the digital asset is sold only to be used to purchase a good or service available through the network on which it was created, the sale of such digital asset most likely does not constitute a security.

On the enforcement side, the SEC has brought enforcement actions relating to virtual currency against Ponzi schemers and fraudulent, unregistered virtual currency and ICO promoters. In July 2013, it filed its first action in SEC v. Shavers against an individual who allegedly ran a Ponzi scheme based on Bitcoin-dominated investments. While the defendant argued that the SEC lacked jurisdiction since the Bitcoin investments did not constitute securities, the court held that the transactions met the Howey test as an investment contract subject to the SEC’s jurisdiction. Since Shavers, the SEC has brought numerous other enforcement cases focused on registration failures by operators of virtual currency-related enterprises.

Since late 2017, the SEC has brought numerous enforcement actions relating to ICOs. For example, in September 2017, the SEC filed a complaint against two companies and their owner, Maksim Zaslavskiy, for fraudulent conduct relating to two ICOs that offered tokens for diamond and real estate investments with promises of high profits, even though neither company had “any real operations,” lacked any of the purported “team of lawyers,” and could not pay investors any returns. In November 2017, the U.S. Department of Justice (DOJ) charged Zaslavskiy with federal criminal securities fraud and conspiracy violations in connection with his alleged fraudulent cryptocurrency ICO scheme. In December 2017, the SEC obtained an emergency asset freeze to halt an ICO fraud by repeat securities law violator Dominic Lacroix that raised up to $15 million from thousands of investors in four months by promising a 1,354 percent profit in less than
29 days.27 Also, in December 2017, the SEC obtained a cease-and-desist order against California-based Munchee, Inc., a company selling unregistered digital MUN tokens for its blockchain-based food review service through an ICO that touted the efforts by the company to increase the value of the tokens and support a secondary market for them.28

In April 2018, the SEC and DOJ brought parallel civil and criminal cases against two Florida men who solicited investments in a $32 million ICO for the Centra Token that falsely claimed it was backed by major payment processors like Visa, MasterCard, and Bancorp.29 The defendants are alleged to have completely fabricated two company executives on its website, promised a fictional dividend, and paid celebrities (music producer DJ Khaled and former boxing champion Floyd Mayweather) to promote the Centra ICO.30

More recently, in September 2018, the SEC filed securities charges against an international securities dealer, Ipool Ltd., aka 1Broker, and its Austria-based CEO Patrick Brunner in connection with security-based swaps funded with bitcoins.31 “International companies that transact with U.S. investors cannot circumvent compliance with the federal securities laws by using cryptocurrency,” said Shamoil Shipchandler, SEC Director of the Fort Worth Regional Office.32

Understanding that it stands on the precipice of exponential growth of cryptocurrency transactions and ICOs, the SEC has shown that it will prosecute aggressively those who operate fraudulent cryptocurrency schemes, shut down expeditiously those who fail to register virtual currency securities and to license virtual currency platforms and exchanges, and advise proactively the investing public about the dangers they face from cryptocurrency investments. However, as SEC Chair Clayton has acknowledged, the SEC lacks authority over transactions in currencies or commodities, including currency trading platforms, as well as over utility tokens that do not have the hallmarks of securities.33 As such, the SEC’s ability to regulate and enforce its laws in the cryptocurrency world is necessarily limited, requiring it to work with other agencies and/or seek enhanced jurisdiction from Congress.

The CFTC has taken the position that virtual currency is a commodity and therefore subject to its oversight under the Commodity Exchange Act (CEA).34 On March 6, 2018, the CFTC’s cryptocurrency jurisdiction was confirmed in CFTC v. Patrick K. McDonnell and CabbageTech, Corp. dba Coin Drop Markets, a case in which the CFTC had sued the defendants under the CEA for operating a deceptive and fraudulent virtual currency scheme.35 The defendants argued that the CFTC lacked authority to regulate cryptocurrency as a commodity or exercise its jurisdiction over fraud that does not directly involve the sale of futures or derivative contracts. U.S. District Judge Jack Weinstein ruled that since virtual currencies were “goods” exchanged in a market for a uniform quality and value, they fell well within the common definition of “commodity” under the CFTC’s jurisdiction.36 Recently, in October 2018, a Massachusetts district court in CFTC v. My Big Coin Pay, Inc., confirmed the CFTC’s authority to regulate virtual currency as a “commodity” under the CEA even when there were no current futures contracts for the virtual currency.

While the SEC and CFTC have overlapping jurisdictions, rather than compete, they have publicly stated their commitment to coordinate on enforcement efforts in the virtual currency arena. SEC Chair Clayton and CFTC Chair J. Christopher Giancarlo, in a show of coordinated action, jointly penned an article in The Wall Street Journal on January 24, 2018, stating: “The CFTC and SEC, along with other federal and state regulators and criminal authorities, will continue to work together to bring transparency and integrity to these [cryptocurrency] markets and, importantly, to deter and prosecute fraud and abuse.”38 This statement of coordination in virtual currency enforcement actions echoed the statement issued the week before by the SEC and CFTC Enforcement Directors.39 Indeed, the CFTC has formed an internal virtual currency enforcement task force that has worked cooperatively with its counterparts at the SEC.40

Since late 2017, the CFTC has aggressively brought numerous enforcement actions against virtual currency defrauders. In September 2017, it brought its first virtual currency anti-fraud enforcement action involving Bitcoin against Gelfman Blueprint, Inc. and its chief executive officer Nicholas Gelfman for operating a Bitcoin Ponzi scheme that obtained more than $600,000 from at least 80 customers by falsely promising to employ a high-frequency, algorithmic trading strategy to trade Bitcoin and then misrepresenting the results of the strategy.41 Then, in January 2018, the CFTC brought three cryptocurrency enforcement actions against: 1) My Big Coin Pay, Inc., which charged the defendants with commodity fraud and misappropriating over $6 million from customers through its sale of a virtual currency (My Big Coin) by, among other things, transferring customer funds into personal bank accounts and using those funds for personal expenses and the purchase of luxury goods;42 2) The Entrepreneurs Headquarters, Ltd., which charged the defendants with engaging in a fraudulent scheme to solicit Bitcoin and making Ponzi-style payments to commodity pool participants from other participants’ funds, among other allegations;43 and 3) CabbageTech, Corp., which charged the defendants with fraud and misappropriation in connection with purchases and trading of Bitcoin and Litecoin.44

Not only has the CFTC actively engaged in enforcement actions, it also has encouraged the growth of regulated virtual currency derivatives (futures, options and swaps) trading platforms. In 2016, just one year after sanctioning the same trading platform for wash trading, the CFTC granted formal registration to TerraExchange, an early entrant in the market for Bitcoin financial derivatives.45 In July 2017, the CFTC approved LedgerX LLC, the first federally regulated Bitcoin options exchange platform in the United States.46 In December 2017, the CFTC allowed the CME Group Inc. and Cboe Global Markets Inc. to start offering Bitcoin futures, an action that helped spike an 80 percent jump in the spot market.47

Like the SEC, the CFTC has recognized the limitations of its authority as it does not have jurisdiction under the CEA over markets or platforms conducting cash or “spot” transactions in virtual currencies or over participants on such platforms; indeed, no U.S. federal regulator has any oversight authority over spot virtual currency platforms in the United States or abroad.48 Without such authority in these areas, the CFTC cannot impose registration requirements, surveillance and monitoring, transaction reporting, capital adequacy, trading system safeguards, or cyber security examinations on the participants.49

FinCEN, a federal agency in charge of protecting the integrity of the U.S. financial system, has joined other federal regulators to assert authority to regulate virtual currency pursuant to its mandate under the Bank Secrecy Act (BSA) to police money laundering. Like other government enforcers, FinCEN proclaims its desire to “promote the positive financial innovations associated with [virtual currency’s] technology, while protecting our financial system from criminals, hackers, sanctions-evaders, and hostile foreign actors.”50 In guidance issued in March 2013, FinCEN classified persons who create, obtain, distribute, exchange, accept, or transmit virtual currencies
into three groups: users, administrators, and exchangers. Users who obtain virtual currency and use it to purchase real or virtual goods or services are not subject to FinCEN’s regulations. Administrators who engage as a business in issuing, putting into circulation, or redeeming a virtual currency, and exchangers who engage as a business in the exchange of virtual currency for traditional currency, funds, or other virtual currency, are subject to the full panoply of FinCEN’s registration, reporting, and record-keeping requirements for “money services businesses” (MSBs). Those MSB requirements include registration, know your customer (KYC) regulations, anti-money laundering (AML) programs, obtaining customer identification information, and filing suspicious activity and currency transaction reports.

FinCEN has taken an expansive view of the type of activity that falls under its jurisdiction. In an advisory ruling in October 2014, FinCEN stated that a virtual currency trading platform that matched buyers and sellers of virtual currency acted as a money transmitter subject to FinCEN’s regulations, even though the trading platform did not transact directly with either party and served only as facilitating broker. FinCEN explained that the “method of funding the transactions is not relevant to the definition of money transmitter” and that the term encapsulates any person that accepts currency in whatever form “with the intent and/or effect of transmitting” currency in whatever form to another person or location. Thus, any entity that plays a role in the movement of virtual currency from one party to another may be subject to FinCEN’s jurisdiction.

The power of FinCEN’s MSB requirements to mandate administrators and exchangers of virtual currency to obtain identification information of the virtual currency’s user and source of funds is that they provide law enforcement with the ability to work its way through the blockchain to track down the actual person identified in potentially illegal cryptocurrency transactions. FinCEN regularly receives over 1,500 Suspicious Activity Reports (SARs) per month from MSBs and financial institutions describing potentially illegal activity involving virtual currency. This illicit activity has encompassed abusing virtual currency to facilitate cybercrime, black market sales of illicit products and services, and other high-tech crimes. FinCEN maintains a team of analysts to examine BSA filings from virtual currency MSBs including filings pertaining to digital coins, tokens, and ICOs to “proactively identify trends and risks for money laundering, terrorist financing, and other financial crimes, and provide this information to U.S. law enforcement and other government agencies.” These analysts also have worked with the IRS to comprehensively examine to date approximately one-third of the over 100 virtual currency exchangers and administrators that have registered with FinCEN.

In addition to these examinations, starting in 2015, FinCEN has brought significant enforcement actions against exchanges and individuals who operate exchanges. In May 2015, FinCEN initiated its first action against a U.S. virtual currency exchange, Ripple Labs, over allegations that Ripple Labs failed to register as a MSB in connection with selling its virtual currency, XRP, and failed to maintain an AML program. Ripple Labs agreed to pay a civil money penalty of $700,000 and also resolved potential criminal charges with the DOJ by forfeiting $450,000. In 2015, the FinCEN working with the DOJ brought criminal charges against Anthony Murgio and his co-conspirators for operating Coin.mx, an unregistered Internet-based Bitcoin exchange, through which he processed more than $10 million in illegal bitcoin transactions; he pled guilty and in June 2017 was sentenced to 5½ years in prison. In July 2017, FinCEN brought its first case against a foreign virtual currency exchange, BTC-e, and assessed its largest penalty to date—$110 million—against BTC-e for violating U.S. AML laws. BTC-e was one of the largest virtual currency exchanges by volume in the world and facilitated transactions involving ransomware, computer hacking, identity theft, tax refund fraud schemes, public corruption and illegal drug sales on dark net markets like Silk Road, Hansa Market, and AlphaBay. FinCEN coordinated with the DOJ, IRS, FBI, U.S. Secret Service, and Homeland Security Investigations to bring criminal charges of money laundering and operating an unlicensed money service business with a potential sentence of well over 10 years’ imprisonment against Alexander Vinnik, one of BTC-e’s operators, and assess him a $12 million penalty. This action leaves no doubt that FinCEN is willing to pursue virtual currency activity that subverts U.S. law, regardless of where the offender is incorporated or domiciled.

FinCEN also has worked in tandem with state licensing authorities across the country to regulate those who are permitted to handle people’s virtual currency. These state money transmitting licensing regimes typically require detailed information about the cryptocurrency exchange’s business plans, financial statements, and compliance and cybersecurity programs, as well as requiring the entity to be bonded and have the executives submit to background checks and regular auditing. For instance, starting in 2015, New York instituted a “BitLicense,” a business license that covers substantially all “virtual currency business activity” to the extent it touches New York or its residents. Through March 2018, however, the New York Department of Financial Services had only issued four BitLicenses, after a comprehensive review of each company’s anti-money laundering, capitalization, consumer protection and cybersecurity policies.

Given the overlapping jurisdictions and gaps in enforcement, there are many steps that Congress and law enforcement agencies can take to address the potential cryptocurrency-related crimes, ranging from Ponzi and other fraudulent schemes to tax evasion, money laundering, terrorist financing, and outright theft. On one extreme, the U.S. can follow the enforcement and regulatory models of countries like Bangladesh, Bolivia, Ecuador, Kyrgyzstan, Morocco, Nepal, Vietnam, and, more recently, China and South Korea that have banned cryptocurrencies and/or shut down virtual currency online exchanges and ICOs completely. Such a black-and-white enforcement model offers certain immediate advantages since it does not require lengthy and detailed examinations of virtual currency exchangers or online trading platforms or a taxpayer’s basis in a virtual currency—it simply bans and criminalizes all actions associated with cryptocurrencies. It is a strategy consistent with that adopted by certain financial institutions like Bank of America, Citigroup, Lloyds Banking Group, and J.P. Morgan Chase, all of which have agreed to no longer allow cryptocurrencies to be purchased with their credit cards. Internet companies, like Google, Facebook and Twitter, also have stated that they will ban all online advertisements for cryptocurrencies. The disadvantages of this “complete ban” strategy, however, are those repeatedly voiced by all government regulators themselves. Since this financial technology has the potential, if properly regulated, to revolutionize financial markets and bring increased transparency, efficiency, and access not only to Wall Street but also to Main Street investors and consumers, completely banning virtual currencies will stunt innovation and divert these currencies onto unregulated, unlicensed platforms and facilitate illicit uses.

Another enforcement path lies with Congress either providing greater jurisdiction to the SEC, CFTC, and FinCEN to address the gaps in their oversight or creating a new agency, like a Cryptocurrency Exchange Commission (CEC), and invest it with...
powers to cover all aspects of virtual currency transactions. Such an agency would not have the SEC’s limitations of being unable to regulate utility tokens or money transmission businesses, the CFTC’s lack of jurisdiction to regulate participants, markets, or platforms conducting cash or “spot” transactions in virtual currencies, or FinCEN’s inability to impose uniform national regulation and enforcement of money services businesses currently subject to the myriad of state licensing regimes. This type of an agency would be able to better centralize policy-making and enforcement, work with domestic constituents and its international counterparts since virtual currencies know no boundaries, and provide clearer and more enhanced protections to consumers and participants in the cryptocurrency world going forward. Congress created the SEC in 1934 to implement greater federal regulation of the securities market, while the CFTC was formed in 1974 to improve regulation of the futures and options markets and the FinCEN was established in 1990 to combat money laundering, terrorist financing and other financial crimes. Now, it is time for Congress to create the CEC as the federal “crypto-sheriff” to strike the right balance in reining in the Wild West of Cryptocurrency.

As CFTC Chair Giancarlo accurately expressed, such a balance is crucial in taking advantage of the potential that cryptocurrency has to offer while mitigating its downsides risks:

We are entering a new digital era in world financial markets. As we saw with the development of the Internet, we cannot put the technology genie back in the bottle. Virtual currencies mark a paradigm shift in how we think about payments, traditional financial processes, and engaging in economic activity. Ignoring these developments will not make them go away, nor is it a responsible regulatory response. … With the proper balance of sound policy, regulatory oversight and private sector innovation, new technologies will allow American markets to evolve in responsible ways and continue to grow our economy and increase prosperity.

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2 Id.


4 See testimony of SEC Chairman Jay Clayton, Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission, before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), available at https://www.banking.senate.gov/imo/media/doc/Clayton%20Testimony%202-6-18.pdf [hereinafter Clayton Testimony].

5 Id. Indeed, the total value of all Bitcoin is approximately $130 billion (based on a Bitcoin price of $7,700) which is approximately the same as a single “large cap” business like McDonald’s (around $130 billion). While the total value of all outstanding virtual currencies is estimated to be about $365 billion, the total value of all gold in the world is estimated to be about $8 trillion. See testimony of CFTC Chair J. Christopher Giancarlo before Senate Banking Committee (Feb. 6, 2018), available at https://www.cftc.gov/PressRoom/SpeechesTestimony/opgiancarlo37 [hereinafter Giancarlo Testimony].


8 Id. at 299.


10 SEC Chair Clayton emphasized how the substance of the virtual currency rather than its label as a token or currency will control, e.g., if a token represents a participation interest in a book-of-the-month club, that may not implicate the securities laws and be an efficient way to fund the future acquisition of books for token holders. However, if the token is more analogous to an interest in a yet-to-be-built publishing house with the authors, books and distribution networks all to come and the offering emphasizes the secondary market trading profit potential of the tokens based on the efforts of others, these are key hallmarks of a security and securities offering.


15 Clayton Statement, supra note 10.


21 Id. at *2.


24 United States v. Zaslavskiy, No. 1:17-cr-00647-RJD (E.D. N.Y. Nov. 21, 2017), available at https://ia802805.us.archive.org/35/items/gov.uscourts.nyedn40985/ia802805.us.courtsey.nyd40985.07.10.pdf. In September 2018, the court rejected Zaslavsky’s argument in his motion to dismiss that he could not be charged with securities fraud because the digital tokens he sold were not securities. Id., Doc. 37, Memorandum & Order (Sept. 11, 2018).


31 Clayton Testimony, supra note 4.


30 Giancarlo Testimony, supra note 6.


35 Giancarlo Testimony, supra note 6.

36 Id. at ¶ 24.


40 Giancarlo Testimony, supra note 6.


48 Giancarlo Testimony, supra note 6.

49 Id.


51 Application of FinCEN’s Regulations to Persons Counterparts in Banning People from Buying Cryptocurrencies with Credit Cards, U.S. Dep’t of Treasury Fin. Crimes Enforcement Network (May 5, 2015), https://www.fincen.gov. As of 2015, XRP was the second-largest cryptocurrency by market capitalization after Bitcoin.


54 Id.


56 FinCEN Letter, supra note 50.

57 FinCEN Fines Ripple Labs Inc. in First Civil Enforcement Action against a Virtual Currency Exchanger, U.S. Dep’t Treasury Fin. Crimes Enforcement Network (May 5, 2015), https://www.fincen.gov. As of 2015, XRP was the second-largest cryptocurrency by market capitalization after Bitcoin.


60 Id.


62 Giancarlo Testimony, supra note 6, at n.4.


66 Giancarlo Testimony, supra note 6.
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I was pleasantly surprised to learn that the Los Angeles County Bar Association has brought back the Bridging the Gap program. For the uninitiated, “Bridging the Gap” is an all-day orientation program specifically geared towards the very new attorney (barrister), recently successful bar applicants, or recent law school graduates. The aim of the program is to assist the new lawyer in “bridging the gap” from law school to actually practicing law. Last April, LACBA reintroduced the program in an event, “Bridging the Gap: From Books to Billables,” that took place at Loyola Law School. I understand that LACBA plans to sponsor a similar event in the early part of the coming year, and I wholeheartedly support and encourage this plan.

I am not quite sure how or why it happened, but several years ago I was invited to be a presenter for another Bridging the Gap program on the course for those “newbies” who desired to open their own law offices and handle criminal defense cases. It is important at this point to explain that I had made the decision to be a lawyer when I was in the third grade at Rosecrans Elementary School in Compton. My father, Maxcy D. Filer, was very involved in the civil rights movement of the 1950s and 1960s. My mother, Blondell Filer, and he were founding members of the Compton Branch of the NAACP, and my dad served for several years as president of the local branch. During this time, my father also was attending law school in the evenings at the small (now defunct) Van Norman University Law School.

The NAACP meetings were held in our living room, which served as the headquarters for the newly organized branch. I frequently sat in (i.e., spied) on the meetings. I distinctly remember their discussions about boycotts, picket lines, and discrimination lawsuits with the rhetorical inquiry at the end of every discussion being “Have we run this by our lawyers?” or “What did the attorney say about this strategy?” So, I immediately learned (and liked) that this “lawyer person” seemed to carry a lot of authority.
As my dad had legal aspirations of his own, he, of course, encouraged me to pursue being an attorney. Hence, my ultimate dream was to become a lawyer in private practice with my dad in my hometown of Compton, California.

I graduated from UC Berkley’s School of Law in 1980, passed the California Bar Examination, worked for two years with the California Office of the State Public Defender, and in 1982, opened my own general law practice in Compton with an emphasis on criminal defense work. I hired my dad as my law clerk and my mom as my secretary. (My father had graduated from Van Norman Law School in 1967 but was not yet a lawyer at the time that I set up practice. His story is worth an entirely separate article. Google “Maxcy D. Filer,” and it will soon be apparent why.)¹ I maintained a private law practice for 11 years. I loved practicing law and made a good living for me and my family; however, in December 1993, I was hired as a Compton Municipal Court Commissioner. This event initiated my career as a judicial bench officer. In 2002, Governor Gray Davis appointed me to be a Superior Court judge.

My background reflects the importance of having mentors for our profession. I know that the success of my private law practice was due first to the example and encouragement I received from both my parents. Beyond that, I am deeply indebted to the guidance, support, and mentorship of dozens of attorneys that I met via my dad’s involvements with the NAACP, including Roland Hall, Johnnie Cochran, Carl Jones, Phil Jefferson, Arnold Widener, Nelson Atkins, and Dean Farrar, just to name a few. In different ways they all shared suggestions and helped me to prepare to be a solo practitioner. I am fully aware that I stand on their shoulders and have always believed in the commitment of “giving back.” We all should recognize a commitment to help others, particularly those who are just starting their journey. Thus, when I was asked to participate as a presenter for that earlier Bridging the Gap program many years ago, I readily agreed to serve. I was asked to present practical tips and insights to “bridge

The Honorable Kelvin D. Filer

Los Angeles Superior Court Judge Kelvin D. Filer, was “born, raised, and educated” in Compton, California, which he likes to emphasize in order to send a message to young people from the area that “if I made it, so can you.” He majored in political science at the University of California at Santa Cruz where he received a Bachelor of Arts degree in 1977, graduating with honors. After receiving his J.D. from UC Berkeley (Boalt Hall) in 1980, Filer practiced law as a California deputy state public defender for two years. Then, in 1982, he opened a private law practice in his hometown with an emphasis on criminal defense work. He became a commissioner for the Compton Municipal Court in July 1993, later serving as a Los Angeles County Superior Court commissioner after unification of the courts in 2000. Upon being appointed as a judge of the Superior Court in Los Angeles, in 2002, Filer asked that his assignment remain in Compton. He currently presides over a long cause felony trial court.

During Filer’s term as deputy state public defender he argued and won a landmark case before the California Supreme Court in 1980. The case was People v. Taylor,¹ a unanimous decision holding that criminal defendants have a right to wear civilian clothing—“the garb of innocence”—during their trials. Moreover, as a judge, Filer, issued a high-profile ruling in September 2011 in the case of Obie Anthony, in which Loyola Law School’s Project for the Innocent played a major role in uncovering new evidence that exonerated Anthony.² Filer found that Anthony had been wrongfully convicted of murder in 1995, and after holding an evidentiary hearing, Filer reversed the conviction.³ In Filer’s words, “An injustice had been done by this man’s conviction” and he ordered Anthony released from custody. Judge Filer subsequently made a judicial determination that Anthony was “factually innocent” of all charges. Since Filer’s ruling, the State of California has implemented legislation that increases the penalties for California prosecutors who hide exculpatory material from the defense.

True to his belief in the commitment of “giving back,” Filer works very closely with the youth of the community by participating in the Courthouse Interchange program as a presenter/lecturer at Compton High School and serves as a judge for the Teen Court Program at Jordan and Compton high schools. Filer serves as a member of the California Judges Association and is a founding member of the Association of African American California Judicial officers. A life member of the NAACP, he is also a life member of both the California Association of Black Lawyers and the John M. Langston Bar Association. He served several years as a member of the Board of Directors for the Compton Chamber of Commerce beginning in 1984. In 2007, Judge Filer was the recipient of the UC Santa Cruz “Distinguished Social Services Alumni Award” in recognition for his achievements in community, education, and service. Among the many other honors and recognitions he has received, Judge Filer cherishes that in 2016 he was recognized as an “Outstanding Father” by the Long Beach Branch of the NAACP and, in 2017, he was the recipient of the Unsung Hero: Community Judiciary Award by the City of Compton. Also, in 2017, Judge Filer was inducted into the John M. Langston Bar Association Hall of Fame.

¹ People v. Taylor, 31 Cal. 3d 488 (1982).
² Aaron Smith, Trial and Error, LMU MAGAZINE, Fall 2011, available at https://magazine.lmu.edu/articles /trial-and-error.
the gap” for aspiring solo practitioners. I was very fortunate and had the great honor of co-presenting with some of our brightest legal minds: the Honorable Lance A. Ito, the Honorable Victoria M. Chavez, and famed attorney Mark J. Geragos.

In that presentation, a variety of topics were discussed, including starting a law office, the basic necessities that are required, why choose criminal defense work, standard library materials, and how to get cases. Telephone numbers and procedures to locate individuals who are being detained in the county jail were also provided. The presenters made it a point to give practice tips for court appearances that are not provided in law school. For example, before appearing in court, counsel should try to get some background information about the judge from the published “judicial profiles” in the Daily Journal. Once a court date is assigned, counsel needs to arrive at the courtroom early and talk to the public defender, other defense counsel, the prosecutor, the bailiff, and the judicial assistant—they are all excellent sources of information in the courtroom to discover what to expect once the case is called. We pointed out that there are certain items to have handy in one’s briefcase—business cards, calendar datebook, camera, cassette recorders, court directory with telephone numbers. Of course, with today’s technology these items or their equivalent can all be maintained on a cellphone or iPad.

We talked about respecting courtroom etiquette, to wit, counsel should always make an introduction to the bailiff, the judicial assistant, and the court reporter. The bailiff should always be asked for permission to approach the judicial assistant’s desk. Counsel should always provide a business card to the judicial assistant and spell his or her name for the court reporter. Counsel should always know the client’s calendar number on the court’s docket so counsel will be ready to answer when the case is called. Counsel should always be an advocate for his or her client but at the same time be respectful to the court and courteous to opposing parties and counsel.

These were some of the practical tips and suggestions that were provided “back in the day” at that former Bridging the Gap program. I can attest that there is still very much a need for this type of mentorship. I also feel gratified that there are individuals who are ready and willing to serve as presenters for the various classes. I am confident that all of us will benefit from the exchange of this type of information. That is why I am grateful to hear that “the bridge is back”!

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My Own Words

Justice Ruth Bader Ginsburg’s *My Own Words*, first published in 2016, came out in paperback this August. The reissue could not have come at a better time. What Justice Ginsburg has to say offers an antidote to all that was poisonous in the recent drama surrounding what Oyez.org dubs the return, after half a century, of “a solid conservative majority” to the U.S. Supreme Court. Both those who applaud and those who abhor that return will gain perspective on the long-range life of the Court from this readable volume.

*My Own Words* collects some three dozen of Justice Ginsburg’s speeches, essays, briefs, and bench announcements—a minute selection from her writings but one that illuminates much about her mind and heart. Edited by law professors Mary Hartnett and Wendy W. Williams, *My Own Words* was intended as a follow-up to a biography to be authored by Hartnett and Williams. But the authors are deferring the biography until, as the Justice explains in the preface, “[her] Court years neared completion,” so the order of publication has flipped. The collection is a sampler of Justice Ginsburg’s early essays and op-ed pieces; commentary on constitutional law; and excerpts from briefs and opinions, including bench announcements for seven resounding Ginsburg dissents. It provides an overview of all she stands for, seen in the preface, “‘Waypavers and Pathmakers.’ Wit, clarity, and persuasive reasoning pervade them all.

The Justice’s insights on history, the Constitution, and judicial decision-making, as represented in *My Own Words*, are thought-provoking, persuasive, and packaged in writing that is spirited, clear, and witty. Take, for example, Justice Ginsburg’s discussion, in a 2008 lecture, of the impact of the 1976 case, *Craig v. Boren*. In *Craig*, the Supreme Court recognized a heightened level of scrutiny for laws creating gender-based discriminations. Applying that standard, the Court struck down a law allowing women to purchase “near beer” at a younger age than men. Justice Ginsburg calls *Craig* a key doctrinal advance but wishes the Court had announced the advance in “a less frothy case.” Other writings in the sampler range in subject from opera to Supreme Court life off the bench to tributes to Justices Sandra Day O’Connor and Louis Brandeis, as well as others Justice Ginsburg calls “Waypavers and Pathmakers.” Wit, clarity, and persuasive reasoning pervade them all.

Of particular interest are Justice Ginsburg’s reflections on attorney Ginsburg’s Supreme Court victories in the cause of women’s rights. Beyond their general interest, these carry an important reminder as the Supreme Court enters a phase that some hope, and some fear, will drastically change the direction of constitutional law—Those victories were not handed down by a “liberal” Court but by the Burger Court of the 1970s, with its Republican-appointed majority. The last of them, *Duren v. Missouri* effectively overruled, 8 to 1, a decision of the (usually) liberal Warren Court, *Hoyt v. Florida*. The same Court that had decided *Brown v. Board of Education* approached gender equality in a way diametrically opposite to its approach to racial equality in *Brown*. *Hoyt* unanimously upheld a state law that disproportionately excluded women from jury venires.

Justice Ginsburg also reminds, through remembrances of her close friend, the late Justice Antonin Scalia, that progressives and originalists can work together. She calls the Court “a paler place” without him, revealing as much about the way Justice Ginsburg believes the Supreme Court should function as about the two justices’ friendship. Their fiery and not infrequent disagreements on the law were not, to her, an ideological war but a collegial and constructive dialectic. A case in point is *United States v. Virginia*, an 8-1 decision authored by Justice Ginsburg, from which Justice Scalia dissented. In it, the Court ruled that the exclusion of women from the Virginia Military Institute violated the Equal Protection Clause of the Fourteenth Amendment. Justice Ginsburg relates how her opinion evolved through an exchange of a dozen drafts of her opinion and Justice Scalia’s dissent. By the time the two “agreed to say ‘Basta!’” the opinion of the Court was, in the Justice’s modest words, stronger (p. 281). Otherwise stated, it was an opinion worthy of the momentous decision it embodied. That, the Justice avers, happened every time she wrote for the majority and Scalia dissented. “Justice Scalia honed in on the soft spots and gave me just the stimulation I needed to strengthen the Court’s decision.” (p. 40)

This brings up Part Five of *My Own Words*, “The Justice On Judging And Justice.” There, Justice Ginsburg distills her view of the way “judging” and “justice” connect. Starting with the fourth piece, “Speaking In A Judicial Voice,” the 1993 James Madison Lecture on Constitutional Law at New York University, the Justice charts a judicial philosophy that is both bold and nuanced. She endorses the concept of an evolving Constitution, but she hews to an essentially conservative approach to judicial innovation, favoring “measured motions” for constitutional adjudication. She is not, for example, a fan of *Roe v. Wade*—a stance that lost her considerable support from women’s rights leaders when President Clinton nominated her for the Supreme Court a few months after the Madison lecture. She explains that *Roe*, in her view, addressed women’s reproductive rights from a constitutionally weak perspective and, in that way, fueled...
rather than resolved the nation’s rancorous abortion battles.

“Human Dignity And Equal Justice Under Law,” a collection of three short speeches, sets forth three pillars of Justice Ginsburg’s vision of the Constitution: 1) her conviction that an ideal of dignity and equality for all is implicit in the Constitution, although not mentioned in its text; 2) her gratitude for the strides toward the ideal that are represented by Brown v. Board of Education and Loving v. Virginia; and 3) her conviction that, going forward, measures falling under the rubric of “affirmative action” are essential to the accomplishment of the ideal, despite the collateral unfairness to many individuals not responsible for society’s past wrongs.

In “The Role Of Dissenting Opinions,” Justice Ginsburg discusses three ways in which dissents advance the cause of a more perfect society. Draft dissents may persuade the original majority to compromise its position. Dissents over the construction of a statute may persuade legislators to amend the statute. Then, there also are the dissents that former Chief Justice Charles Evans Hughes called “appeal[s]...to the intelligence of a future day.” Justice Ginsburg pays homage to dissents of that kind, including the dissent of Justice Benjamin Curtis in Dred Scott v. Sandford.

Seven of Justice Ginsburg’s own appeals to the intelligence of a future day follow. These are a delight to read: they are impassioned without being passionate, and they are strenuously reasoned.

At the end of each Supreme Court term, Justice Ginsburg presents a summary of the term’s highlights at the Second Circuit’s annual conference. Her highlights of the 2015–2016 term are the final words in My Own Words. However, they are hardly her final words. Williams and Hartnett report that, as of 2016, the Justice was continuing to do her job “full steam.” Nothing suggests that has changed. The Court issued 145 decisions in the 2016-2017 and 2017-2018 terms. Justice Ginsburg wrote opinions in 26 of them. Eight were dissents.

1 Citations and footnotes in a book review, while unavoidable when reviewing a book by and about a Supreme Court justice, are annoying. Here, then, to get it all over with in one footnote, are citations to all the cases referenced in this review, in the order the cases appear: Craig v. Boren, 429 U.S. 190 (1976); Duren v. Missouri, 439 U.S. 357 (1979); Hoyt v. Florida, 368 U.S. 57 (1961); Brown v. Board Of Educ. Of Topeka, Kan. 347 US 483 (1954); United States v. Virginia, 518 U.S. 515 (1996); Roe v. Wade, 410 U.S. 113 (1973); Loving v. Virginia, 388 U.S. 1 (1967); Dred Scott v. Sandford, 60 U.S. 393 (1857).
Counsel for Justice Provides Crucial Assistance to Angelenos in Need

AS 2018 WINDS DOWN, along with your window to make charitable contributions, consider donating to the four legal services projects run by the Los Angeles County Bar Association's Counsel for Justice (CFJ) that together provide crucial assistance to Angelenos in need. The Domestic Violence, Immigration, Veterans, and AIDS projects provide immediate, life-saving, and transformative services to thousands of clients and their families throughout Los Angeles. However, the projects are only able to survive from year to year based on donations from individuals like you, as well as your companies and law firms.

Every contribution to the CFJ is highly leveraged to provide legal assistance to those most vulnerable in our community. The following stories illustrate the difference your donation of time or money to CFJ can make.

He Pointed a Gun at Her

When Karen, a young mother, arrived at LACBA's Domestic Violence Legal Services Project (DVP), she was scared and shaken. Her ex-boyfriend had arrived at her home demanding to be let in. When Karen refused, John became enraged and began yelling and cursing. He pulled out a gun and pointed it at Karen while their six-year-old son stood next to her. John screamed, “I am going to end this now!”

With the help of the DVP, Karen obtained a restraining order to protect her and her young son. Sadly, Karen’s story is not unique. Last year, more than 4,200 victims came to the DVP seeking help. Many were granted Temporary Restraining Orders, which not only provide life-saving protection to victims but also assist the LAPD and Los Angeles County Sheriff’s Department by providing another tool to deal with the numerous domestic violence calls they handle everyday. That is why police officers, sheriff’s deputies, and county hospitals regularly send victims to the courthouse and to the DVP to seek help.

“Florist to the Stars” Gets a Helping Hand

Rogelio was born in Mexico and came to Los Angeles in the early 1980s. His brother and he built a successful florist shop in Hollywood and were known as “florists to the stars.” In 1992, Rogelio got his green card and became a lawful permanent resident under the 1986 amnesty act. But times changed and Rogelio and his brother lost their business. Rogelio could not find work and lost his home. While homeless, Rogelio lost his green card and identification documents, and eventually was arrested for vagrancy because he didn’t have photo identification to show to the police.

The Immigration Legal Assistance Project of LACBA knew that Rogelio could qualify for public housing if he could obtain social security benefits and proof of his green card status but that it would require many hours of legal work and follow-up with government agencies. After months of sustained effort by the project and Rogelio, Rogelio recovered his green card, obtained ID permitting him to seek work, and became eligible for low-cost housing. Now in his sixties and after years on the streets, Rogelio has a home of his own.

Veteran Gets a Fresh Start

Johnson, a veteran of the U.S. Coast Guard, first came into contact with LACBA’s Veterans Legal Services Project by way of walk-in hours at Bob Hope Patriotic Hall. At the time, Johnson was on probation for a felony conviction. Due to his probationary status and conviction, Johnson was unable to obtain work despite a bachelor’s degree in psychology and a master’s degree in industrial organizational psychology, and numerous efforts to obtain employment.

With the assistance of the project, Johnson was able to get his probation terminated and his felony conviction reduced to a misdemeanor and expunged. With the case resolved, Johnson can obtain employment and become eligible for long-term housing. With the project’s assistance, Johnson said he finally feels like a “normal citizen,” and is grateful that the project’s services were made available to “people like him” without the resources to pay for legal assistance.

Discriminatory Landlord No More

RB, a long-time survivor of HIV and stage-four cancer who has been disabled for many years, walks with a cane and often needs a wheelchair to get around. She had been living in a non-rent controlled apartment for six years, and when she asked her landlord for permission to add a tenant as a live-in aide, the landlord, who had who raised RB’s rent by a whopping 19 percent the previous year, responded by giving her a 60-day notice to vacate. With everything else going on in her life, RB now faced an upcoming surgery with the prospect of losing her housing.

Since LACBA’s AIDS Legal Services Project had helped RB before, she turned to the project for assistance again. Luckily, RB was able to find new housing and move out. The project assembled a pro bono team (Orrick) which filed a complaint with the California Department of Fair Employment and Housing and worked with their mediation team to reach a settlement. A year later, RB received a check for $12,000, and the landlord was ordered to attend four years of landlord training and to post signs in his building that it is illegal to discriminate against people living with disabilities.

For more information and to make your year-end contribution online, go to LACBA’s homepage at www.lacba.org and click on the “Donate CFJ” bar.

By Susan Koehler Sullivan, a partner at Clyde & Co in Los Angeles, practices in the area of commercial litigation with a focus on corporate insurance matters. She is the president-elect of LACBA’s Counsel for Justice.
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