2nd Annual Small Firm Essential Toolkit

Tuesday, Nov 10th, Thursday, Nov 12th and Thursday, Nov 19th

5:00 – 5:20 p.m.
Networking

5:20 p.m. to 6:30 p.m.
Panel 1

6:40 p.m. to 7:40 p.m.
Panel 2

*Times are the same for all program dates*

LACBA Zoom Webinar

*If you are not a member of the LACBA you will need to create a user profile to register for this event.*

6.0 Hours CLE Credit, Includes 1 Hour of Ethics Credit

Program Description

2nd Annual Small Firm Essential Toolkit

*The Business of Law: Maintaining & Growing Your Practice in the Post-COVID World*

Co-Sponsored by CLA’s SOLO Section

Please join us for the first program in this timely 3-part series, the *Small Firm Essential Toolkit*. Seasoned attorneys and other professionals will speak on our changing business environment in the time of COVID, providing strategies and inexpensive tools for improving business visibility, marketing, expanding practice areas, efficient and effective remote technologies, and getting paid.

**Thursday, November 12, 2020**

Panel 1 - Getting the Business: Retooling with New Practice Areas
Panel 2 - Competency and Mentoring (Ethics Credit)
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THE REMOTE ADVANTAGE

EVEN BEYOND THE NEED FOR SOCIAL DISTANCING, THERE ARE MANY ADVANTAGES TO REMOTE DEPOS:

1.) Court Reporter Availability
   We anticipate a flurry of rescheduled depositions as courts reopen in the coming weeks. With the court reporter shortage, avoid the risk of not finding a reporter!

2.) Eliminate unnecessary travel time & costs
   To reduce costs during the economic downturn, shifting depositions from in-person to remote can generate significant savings without compromising quality of service

3.) Easier scheduling
   Since most witnesses are probably more available now than ever before (and possibly opposing counsel also), finding an agreeable time for all parties should be easier

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Does the PNC Have a Viable Employment Claim?

The Attorney’s Quick Guide To Determining Which Claims Are Worth Pursuing

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811 Wilshire Boulevard, Suite 1721
Los Angeles, California 90017
424-284-2401 | www.obagilaw.com
We pay referral fees to attorneys per the R.P.C.

This guide is informational only and not to be construed as legal advice.
**Does The PNC Have A Viable Employment Claim?**

Nearly all of the PNC claims you will field will involve at least one of three primary elements. As you evaluate the viability of the claim, keep these three elements in mind.

### DISCRIMINATION AGAINST A PROTECTED CLASS
- Age (over 40)
- Ancestry / national origin
- Disability (mental and physical)
- Familial status
- Gender expression
- Gender identity
- Genetic information
- Marital status
- Medical condition
- Military / veteran status
- Pregnancy status
- Race / color
- Religion / creed
- Sex / gender
- Sexual orientation

### ILLEGAL ADVERSE ACTION / DISPARATE TREATMENT OR HARASSMENT
- Increase in co-workers' pay / cut in PNC's pay
- Promotion for co-worker / demotion for PNC
- Loss in title
- Refusal to hire
- Termination / threat to job security
- Transfer to another department / location
- Unwanted sexual advance / touching
- Using sexually suggestive language or describing sex acts
- Using racist language / displaying racist images
- Telling offensive jokes about protected class(es) of people

### RETALIATION FOR TAKING PART IN PROTECTED ACTIVITY
Most common protected activities:
- Filing a workers' compensation claim
- Alerting law enforcement or other government agencies about the employer's about illegal activity
- Safety-based actions, which includes filing a complaint with Cal / OSHA or other agency regarding working conditions
- Requesting reasonable accommodations to work with a disability
- Complaining about discrimination or harassment in the workplace
- Refusing to participate in illegal activity

### Other potential causes for employment claims

#### Wage / hour claims
- Was PNC misclassified as independent contractor?
- Was overtime rate of pay appropriately made to PNC?
- Did employer provide paid rest and meal periods as required?

#### Disability discrimination (15+ employees)
- Did employer fail to engage in the process to determine reasonable accommodations?
- Did employer discriminate / retaliate based on disability?

#### Medical / family leave claims (50+ employees)
- Did PNC make protected request for family medical leave?
- Did the employer properly evaluate and respond to request?
- Would employer have taken the action without PNC having ever made the request for leave?

#### Workers' compensation
- PNC must be an employee, not an independent contractor
- PNC must have workplace injury or occupational illness due to work environment
- Did PNC give sufficient written notice re. medical condition?

#### Privacy violations
- Did employer intrude on PNC's reasonable expectation to privacy,
- OR did employer retaliate / harass / discriminate after making the privacy violation?
**Does the PNC Have a Viable Employment Claim?**

*Basic Analysis*

The steps below will assist you in determining the validity of the PNC’s employment claim.

**STEP 1**

Does the employer have 5 or more employees?

If no, FEHA may not apply.

Does the employer have 50 or more employees?

If no, FMLA and CFRA may not apply.

**STEP 2**

Did the employee engage in protected conduct resulting in retaliation?

OR

Did the employer engage in unlawful discrimination or harassment?

**STEP 3**

Did employee sustain adverse employment decision?

**STEP 4**

How long ago was violation?

*Check appropriate statute of limitations for the claim.*

**STEP 5**

**The Retaliation Path**

What protected conduct prompted the retaliation?

Was the protected conduct or complaint in writing, otherwise memorialized or witnessed?

How soon after the protected conduct did retaliation occur?

Was the retaliation in writing?

**The Discrimination / Harassment Path**

What evidence of discriminatory animus or harassment exists?

(Think documents or friendly witnesses)

How much time elapsed between discriminatory or harassing conduct and the adverse employment conduct, if any?

Were other employees similarly treated or terminated?

(Layoff, reduction in force inquiry)

**STEP 6**

**Did the employee suffer money damages?**

Loss of wages

Loss of healthcare insurance, other benefits

**Did the employee suffer non-economic damages?**

Does the employee need psychological treatment or therapy?
### Does The PNC Have A Viable Employment Claim?

#### The Introduction

Here are the questions you should ask a PNC at intake.

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>How did PNC hear about your firm?</strong></td>
<td><strong>PNC Identification information</strong></td>
<td><strong>Information on employer in question</strong></td>
</tr>
<tr>
<td><em>When you ask this question, tell the PNC you love to send a thank you to your referral friends and partners.</em></td>
<td><strong>Full name</strong></td>
<td><strong>Is subject of complaint PNC's current or former employer?</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Age</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Phone number</strong></td>
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</tr>
<tr>
<td></td>
<td><strong>Email address</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Mailing / physical address</strong></td>
<td></td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nature of complaint</strong></td>
<td><strong>Details of / additional information in support of complaint</strong></td>
<td><strong>Financial information / damages</strong></td>
</tr>
</tbody>
</table>
| *If no longer with the company, how did PNC leave company?*  
*e.g., fired, laid off, quit* | *Ask PNC to provide as much detail as they can about how their employment ended or the type of adverse action(s) taken against them that they believe are unlawful or wrongful, and which led PNC to seek legal counsel.* | *Types of damages sustained* |
| **Date of separation or other adverse employment action** |  | **Last salary / rate of pay** |
|  | **Type of unlawful conduct PNC was subject to**  
*Discrimination*  
*Retaliation*  
*Harassment* | **Hours worked per week** |
|  | For each type of conduct, ask PNC to provide details of the conduct  
*For discrimination complaint, please provide basis for discrimination.* | *Does PNC recall signing an Arbitration Agreement?* |
|  |  | *Did PNC sign a severance package or settlement agreement with the employer?* |
|  |  | *Has PNC ever filed for bankruptcy?* |

<table>
<thead>
<tr>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Details of / additional information for complaint (cont.)</strong></td>
</tr>
<tr>
<td><em>Ask PNC to upload / deliver any documents in their possession.</em></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
|  | *Did PNC file any written complaints with any administrative agencies or the employer?*  
*If yes, provide dates and to whom PNC complained.* |  |

<table>
<thead>
<tr>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is there any additional information the PNC would like your firm to know as to why they are contacting you?</strong></td>
</tr>
<tr>
<td><em>If intake is done online / via questionnaire, end with thanking PNC and assure them a member of your firm will contact them promptly.</em></td>
</tr>
</tbody>
</table>
TARA HATTENDORF

SMALL FIRM ATTENTION. LARGE FIRM RESULTS.

Tara Hattendorf is a strong advocate with a compassionate heart. Tara strives to make the litigation process understandable and seamless for our clients. She works throughout the life of a lawsuit to ensure that our clients' goals are at the forefront, and she works diligently to get our clients great results.

Tara supports senior counsel at Obagi Law in all aspects of civil litigation, including pleading preparation, law and motion practice, discovery, conducting and defending depositions, arguing at hearings, assisting and leading settlement discussions, and upholding our stellar reputation for constant contact with our clients.

Already, in her first year with the Obagi Law Group, exceptional examples of results she has achieved for clients include a $250,000 settlement for a retaliatory wrongful termination and quid pro quo sexual harassment, and a $385,000 settlement for a client in a textile industry breach of contract dispute.

Tara developed her passion for law and justice through her undergraduate journalism studies. Subsequently at the USC Gould School of Law, Tara gained invaluable experience at the California Office of the Attorney General in the Civil Rights Enforcement Section. She also clerked at Public Counsel in the Center for Veterans' Advancement. During her final year of law school, she served as a Senior Copy Editor of the Southern California Review of Law and Social Justice.

Tara graduated from Pacific Union College, summa cum laude, with a B.S. in History, Political Studies and Ethics, and a minor in Public Relations & Journalism. She earned a J.D. from the University of Southern California Gould School of Law, with a Certificate in Entertainment Law. Tara was admitted into the California Bar in December 2019. She is also admitted to practice in the Central and Northern Districts of California.
Ann focuses her practice on civil litigation and appeals and provides project and consultation services to solo and small firm practitioners who need workload assistance or a fresh perspective on meeting their litigation objectives.

A 1991 graduate of the UCLA School of Law, Ann has practiced before state and federal trial and appellate courts and administrative tribunals, with emphasis on the representation of health care and other professionals before state licensing boards; first party and third party insurance defense (life, health, disability, and errors and omissions); business litigation (contract disputes, wrongful termination, unfair competition and qui tam), personal injury, and family law. Her appellate advocacy has resulted in several published opinions.

Ann serves on the Executive Committee of the LACBA Small Firm and Sole Practitioner Section and is a member of the LACBA Access to Justice Committee. She formerly served as a Voluntary Settlement Conference Officer for the Los Angeles Superior Court from September 2009 until the program ceased in May 2013, and as a volunteer for the LACBA's Domestic Violence Project.

Ann is a rabid Dodger fan. Although grateful for Kirk Gibson’s game winner in 1988, after 32 years of frustration she is happy there are new World Series highlights.
Bankruptcy Law 101: What to Expect When You’re Discharging Debt

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Chapter 7 (Fresh Start) Chapter 13 (Individual Re-Org) Chapter 11 (Business Re-Org)

<table>
<thead>
<tr>
<th>Chapter 7 (Fresh Start)</th>
<th>Chapter 13 (Individual Re-Org)</th>
<th>Chapter 11 (Business Re-Org)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-6 month bankruptcy poised to liquidated unexempt assets and discharge certain debts</td>
<td>3-5 year bankruptcy where Debtor proposes to reorganize debts to stop foreclosures, repossession, or they simply don’t qualify for CH 7</td>
<td>ReOrganization for businesses and some individuals to get rid of some assets, negotiate others, and cure other deficiencies in a period of upto 5 years</td>
</tr>
<tr>
<td>Filing Fee $335 (*increases to $338 as of Dec 1)</td>
<td>Filing fee of $310 (*increases to $313 as of Dec 1)</td>
<td>Filing fee of $1717 (*increases to $1738 as of Dec 1)</td>
</tr>
<tr>
<td>Debtor must not have disposable income unless qualifying under the non-consumer exception. Trustee is looking for assets to liquidate - very important to ask the right questions and protect everything! Student loans are not dischargeable (unless a non-dischargeability action is filed &amp; won) Only certain income taxes can be dischargeable under the 3 prong test. <em>Businesses liquidating will file this chapter.</em></td>
<td>Saves homes/financed cars from foreclosure. Allows repayment of taxes, car payment &amp; mortgage &amp; DSO amaragesover a period of 3-5 years. Can discharge ‘Equalization Payments’ only here, not DSO. Debt limit for qualifying is $1,184,200 for secured debts and $94,725 for unsecured debts.</td>
<td>Businesses will remain open unlike CH 7, certain debts will be discharged, certain debts will be paid back. Like a chapter 13, a plan of reorganization is filed, the different creditor classes will be voted on to vote. As of 2020, there is now a Small Business CH 11 and the regular one. Difference is mainly amount of debt the case has &amp; the small business CH 11 has a Trustee assigned, with the goal of streamlining things.</td>
</tr>
</tbody>
</table>

Sanaz Sarah Bereliani, Esq // Bereliani Law Firm, PC                310-882-5482 * sanaz@berelianilaw.com
Preparation of the Bankruptcy Petition: Makes or Breaks your Case!

- Go through as many drafts of the petition needed to ensure everything is true and correct before filing - prevents a lot of issues
- Request documentation to back claims (i.e., Prelim)
- If certain expenses on Schedule J look high, make sure it's an average of the last 6 months and that there is proof (in case of an audit)
- If there is real estate involved (even if the client doesn’t live in the property) - request evidence of ownership & value to confirm it is protected before you file.
- Issue spot and flush out assets, fraud claims, future incomes, etc. to protect your client. They do not know what information is important to mention.
- CYA! CYA! CYA! If there are potential assets that may be liquidated, discuss the options and resolutions BEFORE you file.

Who is a Trustee & Who Cares?!

- Trustee is typically an attorney, accountant, or lay person hired by the bankruptcy court to administer the bankruptcy case.
- Trustee is not looking out for the Debtor’s best interest, but looking out for the Creditors, to make sure they are not getting prejudiced by a discharge.
- Trustees receive an ‘administrative fee’ of 10-15% on all assets they liquidate; otherwise, the US Trustee pays them $60/case (approx.).
- Trustee steps into the Debtor’s shoes in administering assets and carries the Debtor’s rights as to the assets.
- Smart to build a relationship with the Trustee, know their style, etc. so you know how best to present your information and what the Trustee looks for.
- As a new attorney, it is important that you attend your 341as and be present in your clients case so the Trustee gets to know you, builds trust and rapport.
What Is a 341(a) Meeting of Creditors?

* Named after 11 USC 341(a) which states that:
  
  Within a reasonable time after the order for relief in a case under this title, the US Trustee shall convene and preside at a meeting of creditors.

Layman’s Terms:

Usually about a month after the bankruptcy case is filed, the US Trustee’s office will assign a meeting date at which the assigned Trustee will ask the Debtor questions under the penalty of perjury to determine whether the case should proceed towards discharge or whether there are any feasibility or liquidation issues.

→ Mandatory Appearance by Debtor & Attorney. Be prepared for the US Trustee and/or creditors (and/or their attorneys) appearing to ask questions.

How to Prepare Your Client for the 341(a) Meeting

- Review the petition with your client - amendments needed?
- Remind clients to have their SSN card and Driver’s License [passport, government issued IDs, alternatives...]
- Schedule a “mock” meeting to walk the client through what to expect the place to look like, where to go/park/arrive, how to answer, etc... client control is very important
  - Cell phone - muted or off
  - Answer Yes or No - no long stories or stating answers not requested
  - Not getting argumentative with Trustee or Creditor
Can Creditors Examine My Client?

- Short answer: Yes.
- Creditors are notified of this public meeting and can choose to appear.
- 99% of the time they do not appear.
- Creditors are allowed a very limited window of asking questions under oath after the Trustee has concluded asking his/her questions.
- Creditors may choose to follow up with a 2004 Exam and/or an Adversary Proceeding for Non-Dischargeability of Debt.
  - Try to see where they are going with their questions, reach out to discuss and see if you can resolve informally if it makes sense.
- More typical in a Ch. 7 case, rather than a Ch. 13 case.

Potential Questions Asked:

- Did you read and understand the petition you signed, before you signed it?
- Do you own any real estate anywhere in the world?
- Have you sold or transferred any assets out of your name in the last 3-4 years?
- Does anyone owe you any money you have a right to sue for?
- Has anyone listed you as a beneficiary of their will or trust?
- Have you had any changes to your finances since the filing of this case?
- Have you reorganized your finances in preparation of filing this case?
- Have you repaid any friends or family any monies in the last year?
- When was the last time you used a credit card? Did you read and understand the petition you signed, before you signed it?
- Are there any changes or corrections you’d like to make to your petition at this time?
- You have listed that you spend $____ on medical out of pocket costs, what do you spend this on and has that been average each month?
- How did you come up with the value of your home?
- Do you receive any bonuses annually? Do you work overtime?
- You listed a 401(k) loan, when did you take out the loan? How much do you pay monthly? When does this end?
Changes to the BK Process due to Covid

- 341(a)s are currently held virtually via Zoom video meetings and/or conference calls, depending on the Trustee.
- Trustees require copies of the Driver’s Licenses & Social Security cards to be sent in prior to the meeting & reviewed by Debtor’s attorney for accuracy.
- Some Trustees require a ‘selfie’ of the Debtor to be sent in right before the hearing (Trustee Weil).
- Ask your client to get on the call/video 5-10 minutes before time is called and to mute themselves. Be in touch with them via text or email to confirm they made it on. If they are older, consider setting up the call for them.
- Appearance attorneys are available but good opportunity to make a personal appearance.
- In certain circumstances, an electronic signature may be OK if the case must be filed and the Debtor does not have access to print/scan/fax etc due to Covid.

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Representing a Creditor in Bankruptcy
To Attend, or not attend, the 341?

Reasons to Attend:
- Opportunity to Ask questions to determine whether there are assets that have not been disclosed
- Opportunity to determine Trustee’s position as to the case (is this an asset case?)
- Bring information to the Trustee’s attention as to Fraud, see if Trustee is willing to collaborate
- May learn something from other creditor’s questioning of the Debtor

Alternatives to You Attending:
- Hire appearance counsel to ask questions on your behalf
- Have your client or paralegal go to observe
- Communicate with Trustee before/after 341(a) to discuss the case/facts.
- Schedule 2004 Exam

Actions to Protect the Creditor in Bankruptcy
- Be in touch with the Trustee to see if this will be an asset case or not; share information you may have regarding fraud or non-disclosure.
- If this is an ‘asset’ case, you must file a valid and sufficient proof of claim by the deadline or be prevented from having a claim.
- If this is a chapter 13, you must file an objection to the Plan if you have issues with the feasibility or best efforts of the case, to prevent it from being confirmed on consent. Also, to argue your claim/objection, most Judges require you to have submitted a written objection for their review, instead of just an oral argument.
- If the creditor/client has a lawsuit pending in state court you may need a Motion for Relief to continue
  - If not you will be in violation of the bankruptcy filing and can be sanctioned if you proceed.
- You have 60 days from the 341a in order to file an Adversary Complaint – determine whether you have a case to proceed with under 11 USC 523 or 11 USC 727 or both
  - Advise your client whether you handle this or not and that this is separate than the original retainer.
Frequently Asked Questions

- What if I cannot make it to the meeting with my client?
  - You should plan ahead and hire an appearance attorney, don’t tell your client to attend alone.
- What if my client is ill or can’t make it to the hearing? (1 freebie allowed)
  - Contact the Trustee’s office if you can to advise of the circumstances and request a continued date.
  - Have an appearance attorney appear and request a continued date.
- Is the Trustee going to grant or deny the bankruptcy at the 341a?
  - No, Trustee only determines whether this is an asset case or not; or whether the meeting needs to be continued for a future attendance if further information is required.
- Can the Creditor Attorney request documents from the Debtor at the meeting?
  - Creditor’s atty can ask the Trustee to share documents received; or see if the Debtor is willing to share documents. If there is resistance, creditor’s attorney can file a 2004 examination.
Sanaz Sarah Bereliani is a graduate of University of Southern California where she attended the Marshall School of Business and received her Bachelor's of Science degree in Business Administration with a focus on real estate law and finance. Ms. Bereliani went on to receive her Juris Doctorate from Whittier College School of Law, with a focus on reorganization and bankruptcy. During law school, she worked as an invaluable law clerk to a prominent Superior Court of California Judge and was later offered an impressive externship at the Equal Employment Opportunity Commission (EEOC).

Ms. Bereliani is a certified legal specialist in bankruptcy law and is admitted to practice law before all Superior and Federal Courts in the State of California, including the Southern District of California, Central District of California, Northern District of California, and Eastern District of California.

Ms. Bereliani strives to provide her clients with high quality bankruptcy representation and alternatives to bankruptcy. She assists Debtors in foreclosure defense, loan modification, debt settlement, and creditor violations litigation, amongst other services at reasonable prices. In addition, Ms. Bereliani represents creditors in various actions including filing adversary complaints to deem debts non-dischargeable, dismissing bankruptcy due to fraud, receiving relief from stay to continue creditor actions in state court and foreclosure, and filing proofs of claims.

Ms. Bereliani is known for her friendly and professional demeanor with clients and is a strong and passionate advocate in court. To Ms. Bereliani, the best part of her job is when a client walks into her office overwhelmed by their financial circumstance and then walks out of her office armed with a plan to save their home, have a fresh start, and a smile.

Education

J.D., Whittier Law School
Student Body Assoc
Jewish Law Student Assoc (President)
National Jewish Law Student Assoc (Co-President)

B.S., University of Southern California
Focus on real estate law and finance from Marshall School of Business
Student Ambassador

Bar Admissions
- California
- All Four (4) District Courts of California

Professional & Bar Association Memberships
- National Association of Consumer Bankruptcy Attorneys, Member
- Women’s Law Association of Los Angeles, Board of Directors – Financial Division
• Central District Consumer Bankruptcy Attorneys Association, Member
• James T. King Southern California Inn of Court, Team Leader

Certifications & Awards
• Experienced, Aggressive & Friendly Bankruptcy & Foreclosure Attorney 2019 Client’s Choice Award Winner
• Certified Legal Specialist in the area of Bankruptcy Law with the State Bar of California
• Selected in 2014 – 2018 as a Southern California Rising Star Super Lawyer by Los Angeles Magazine
• Selected in 2019 as a Southern California Super Lawyer by Los Angeles Magazine
Strategies to Build Your Estate Planning Practice

Kimberly T. Lee, JD

Never let a good crisis go to waste

-Winston S. Churchill
Three Goals

- Overview of Estate Planning Practice
- Strategies to Build Your Estate Planning Practice
- Practical Tools You Can implement Now

“And to whom do you wish to leave the bulk of your estate, sir?”
Definition of Estate Planning

- Control all the assets during my lifetime
- Control who will be in charge, if I’m unable
- Decide who gets what, when, and how
- Make sure minor children are taken care of
- Minimize income, capital gains and estate tax
- Avoid court involvement when I die
- Smooth transition of my estate
- Minimize legal fees and costs

What Is an Estate Planning Practice?

- Estate Planning
- Trust Administration
- Probate Administration
- Main Cross-Over Practice Areas
  - Real Property Cross Over
  - Family Law Cross Over
  - Business Law Cross Over
  - Tax Law Cross Over
Estate Planning

Basic Planning
- Revocable Trust
- Last Will & Testament
- Financial Power of Attorney
- Healthcare Directive
- Medical Authorization
- Proper funding of Assets

Advance Planning
- Irrevocable Life Insurance Trust (ILIT)
- Intentional Defective Grantor Trust (IDGT)
- Asset Protection Trust
- Charitable Trusts (CRUT; CRAT)
- Special Needs Trust (SNT)

Trust Administration

Single Trust
- New tax ID number
- New Certification of Trust
- Affidavit for real property
- Statutory Notice
- Collect the assets
- Determine date of death value
- Pay liabilities
- Make distributions

Joint Trust
- New Certification of Trust
- Affidavit for real property
- Statutory Notice for Irrevocable trust portion
- Trust split / allocation
- Distribute Specific gifts
- Step up in tax basis
- Pay liabilities
- Continue until second death
### The Probate Timeline

<table>
<thead>
<tr>
<th>Step</th>
<th>Duration</th>
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<tbody>
<tr>
<td>Prepare and File Petition for Probate</td>
<td>1-2 months</td>
</tr>
<tr>
<td>Court hearing on the Petition for Probate</td>
<td>2-3 months</td>
</tr>
<tr>
<td>The following are issued: Letters of Administration, Orders for Probate, Duties and Liabilities, Issue Bond (if ordered), &amp; **Letters Testamentary **</td>
<td>2-4 months (if not contested)</td>
</tr>
<tr>
<td>Notice to Creditors</td>
<td>2-4 months</td>
</tr>
<tr>
<td>Notice to Department of Health Services Inventory &amp; Appraisement</td>
<td>4-8 months</td>
</tr>
<tr>
<td>Pay State and Federal Taxes (if necessary)</td>
<td>6-12 months</td>
</tr>
<tr>
<td>Allow or Reject Creditor Claims</td>
<td></td>
</tr>
<tr>
<td>Possible Preliminary Distributions</td>
<td></td>
</tr>
<tr>
<td>Notice to Department of Health Services (if deceased received medical)</td>
<td></td>
</tr>
<tr>
<td>Notice to Franchise Tax Board (if heir is out of state)</td>
<td></td>
</tr>
<tr>
<td>Claim of Exemption (if assets transfer to a minor)</td>
<td>6-15 months</td>
</tr>
<tr>
<td>Receive Final Tax Letter from State and Federal (if appropriate)</td>
<td>6-18 months</td>
</tr>
<tr>
<td>File Petition for Final Distribution and Accounting</td>
<td>8-16 months</td>
</tr>
<tr>
<td>Hearing on Petition for final Distribution and Accounting</td>
<td></td>
</tr>
<tr>
<td>Order Approving Final Distribution and Accounting</td>
<td></td>
</tr>
<tr>
<td>Distribution of Assets to Heirs</td>
<td>9-17 months</td>
</tr>
<tr>
<td>Final Discharge Order (indicates close of probate case)</td>
<td>9-18 months</td>
</tr>
<tr>
<td>Final Distribution of Funds</td>
<td>9-18 months</td>
</tr>
</tbody>
</table>
### Revenue, Income, Control, Freedom and Impact

<table>
<thead>
<tr>
<th>Time Management</th>
<th>Client Development &amp; Marketing</th>
<th>Building a Great Team</th>
<th>Cash Flow &amp; Profitability</th>
</tr>
</thead>
</table>

### Legal Skills

### Jump Start on Legal Skills

- CEB Estate Planning Library
- The Rutter Group
- Estate Planning Institute
- WealthCounsel
- Ultimate Estate Planner
- Etc.
Revenue, Income, Control, Freedom and Impact

- Time Management
- Client Development & Marketing
- Building a Great Team
- Cash Flow & Profitability
- Legal Skills
Time Templates

<table>
<thead>
<tr>
<th>Time</th>
<th>MONDAY</th>
<th>TUESDAY</th>
<th>WEDNESDAY</th>
<th>THURSDAY</th>
<th>FRIDAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>7:00</td>
<td>WORK OUT</td>
<td>WORK OUT</td>
<td>WORK OUT</td>
<td>WORK OUT</td>
<td>WORK OUT</td>
</tr>
<tr>
<td>8:00</td>
<td>TEAM MEETING</td>
<td>TEAM MEETING</td>
<td>TEAM MEETING</td>
<td>TEAM MEETING</td>
<td>TEAM MEETING</td>
</tr>
<tr>
<td>9:00</td>
<td>PRODUCTION TIME</td>
<td>PRODUCTION TIME</td>
<td>PRODUCTION TIME</td>
<td>PRODUCTION TIME</td>
<td>PRODUCTION TIME</td>
</tr>
<tr>
<td>10:00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11:00</td>
<td>RETURN CALLS</td>
<td>RETURN CALLS</td>
<td>RETURN CALLS</td>
<td>RETURN CALLS</td>
<td>RETURN CALLS</td>
</tr>
<tr>
<td>12:00</td>
<td>MARKETING LUNCH</td>
<td>WORK ON YOUR BUSINESS</td>
<td>LUNCH</td>
<td>LUNCH</td>
<td>LUNCH</td>
</tr>
<tr>
<td>1:00 pm</td>
<td>SEE CLIENTS</td>
<td>SEE CLIENTS</td>
<td>SEE CLIENTS</td>
<td>SEE CLIENTS</td>
<td>MARKETING EVENT</td>
</tr>
<tr>
<td>2:00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3:00</td>
<td>MARKETING TIME</td>
<td>PRODUCTION OR COURT</td>
<td>PRODUCTION OR COURT</td>
<td>PRODUCTION OR COURT</td>
<td>PRODUCTION OR COURT</td>
</tr>
<tr>
<td>4:00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5:00</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6:00</td>
<td>GO HOME</td>
<td>GO HOME</td>
<td>GO HOME</td>
<td>GO HOME</td>
<td>GO HOME</td>
</tr>
</tbody>
</table>

Interruptions
Steal 23 Minutes
How to Protect Your Focus
How Is Marketing Different for Estate Planning Practice?

Marketing is a lot like fishing...
Client Development & Marketing

Some Low-Cost Marketing Ideas

- Connect with referral sources
- Birthday / Anniversary cards
- Branded Promotional Items
- Reach Out to Existing client base
- Blog / e-newsletter / Vlog
- Virtual Happy Hour
- Educational Webinars

Main Referral Sources

- Other Attorneys
- CPA and Enrolled Agents
- Financial Advisors
- Insurance Agents
- Bankers
- Mortgage Lenders
Virtual Happy Hour

Ready...Set...Go! Year-End Tax Planning

Desert Law Group
Building a Great Team

Building Your Team

- What Is Your Firm Culture?
- Hire Slow and Fire Fast
- Paralegals and Legal Assistants
- Processes and Procedures
- Remote Team?
Set Team Up For Success

Remote... and Productive

- Set up everyone’s laptop/computer with the appropriate level of access
- Over-communicate with team
- Identify most important tasks each day
- Consider using remote receptionist
- Manage by productivity, not time
Embrace Technology

Cashflow & Profitability
Hourly

Fixed

37

38
Key Takeaways

- Estate Planning is a fabulous practice area
- Time Management: Interruption is a time vampire
- Marketing: Keep fishing!
- Build a Great Team: Hire slow, fire fast; embrace technology
- Profitability: Pay yourself first
Thank You for Your Time!

Kimberly T. Lee, JD
Kimberly Lee is the founder of Desert Law Group, an Estate Planning and Elder Law firm in Indian Wells, California. In addition to managing her busy law practice, Kimberly serves as the Education Chair for the Solo Small Firm Section of the California Lawyers Association (“CLA”) as well as being one of the Update Authors for CEB’s Estate Planning libraries. She is the past President of the Desert Bar Association and the Desert Estate Planning Council.

After graduating Summa Cum Laude from the University of La Verne, College of Law, Kimberly clerked for Justice Marvin R. Baxter (Ret.) at the California Supreme Court. Since her service with the Court, Kimberly has been active in her law practice which focuses on Estate Planning and Elder Law. Kimberly is a member of WealthCounsel, ElderCounsel, the Probate and Trusts Sections of the CLA and the Desert Bar Association.

When she is not working, Kimberly enjoys spending time with her husband and son, as well as her family. In her spare time, Kimberly is an Adjunct Practice Advisor for Atticus and helps other attorneys to grow their practices and to live a great life. She also spend time reading, baking, gardening and working on her many “Not Yet” projects.
Steve Mindel

- Managing Partner of Feinberg Mindel Brandt & Klein LLP
- Practicing Family Law for 30+ Years
- Certified Family Law Specialist

"Family Lawyers for Your Family"

Education

- CFLR - Judge Tom Lewis
- Garrett Dailey - Attorney Brief Case
- ACFLS
- LACBA
- AAML

FAMILY LAW REFRESHER COURSE
February - March 2020

ATTORNEY’S BRIEF CASE presents
16th Annual
Beyond the Basics™
2019 YEAR IN REVIEW:
A FAMILY LAW UPDATE
A comprehensive one-day seminar discussing the 2019 cases and 2020 statutes and rules affecting you and your clients
12 Hours of MCLE/Specialization Credit
Experience

- Focus your volunteer work around your practice
- Contract Work: work for another attorney on an hourly basis to learn new skills
- Mentor Programs

Finding Clients

- Other Family Law Attorneys
- Social Media
- Advertising, SEO, Pay Per Click
Steve Mindel

- Thank you for Listening!
- Connect with me on LinkedIn

“Family Lawyers for Your Family”
Steve Mindel
Certified Family Law Specialist
Managing Partner at FMBK
J.D., USC Gould School of Law, 1985
B.A., University of California, Los Angeles, 1981

Steve Mindel is a founder and the Managing Partner of Feinberg Mindel Brandt & Klein LLP one of Southern California’s largest Family Law firms, established in 1996.

Before becoming a family law attorney, Steve worked in radio sales. His business development skillset carries over into his law office management strategies. Steve has given numerous law firm focused business development presentations including “The Ethics of Converting Prospects into Clients”, “Managing and Growing Your Law Practice in a Work from Home Environment”, and “How to Keep your Law Office from Becoming a Non-Profit”.

Steve has been named a Top Ten SoCal Super Lawyer in Los Angeles Magazine. Steve regularly appears on television and radio including Good Morning America, The Today Show, CNN, KCBS, KABC, KTLA and KCAL. Steve is often quoted in many print publications as well, including AP and the New York Times, Wall Street Journal, Business Insider, Good Housekeeping, Fox.com and People Magazine.

Steve has led and organized multiple managing partner discussion groups that focus on business development, including the Managing Partner’s Roundtable, and the AAML - 21st Century Law Practice Management. Steve is the incoming Chair of the LACBA Family Law Section, is a leader in the Beverly Hills Bar Association, The American Academy of Matrimonial Lawyers, and has served countless volunteer hours with nonprofits including Levitt & Quinn, the Los Angeles Free Clinic, and University Synagogue.

When Steve is not an attorney managing his practice, or a salesman presenting on business development, he is a black belt in Tae kwon do teaching kickboxing classes, and is also a hobby chef that authored two cookbooks with his family.

Connect with Steve on LinkedIn: https://www.linkedin.com/in/stevenmindel/

“Family Lawyers for Your Family”
LANDLORD-TENANT LAW

Presented by:
Maria Hall

RESIDENTIAL
COMMERCIAL
1. EVICTIONS

2. SECURITY DEPOSIT

3. TENANT VS. LANDLORD
   * Slumlord litigation
   * Premises liability
   * Civil Rights
   * Statutory Violations
   * Torts
   * Contract

**COMPLEX ARRAY OF LAWS!**

**CONTRACT STATUTES**
- Health & Safety (e.g., Civil Code; Health & Safety Code)
- Due Process / CCP
- Discrimination / Retaliation / Harassment (e.g., Unruh, Fair Employment & Housing Act)

**COMMON LAW**
- Housing law; tort law (e.g., trespassing, IIED, nuisance, breach of implied warranty of habitability, etc.)

**LOCAL ORDINANCES**
- Rent stabilization, etc.
## (I) UNLAWFUL DETAINER

<table>
<thead>
<tr>
<th>PROS</th>
<th>CONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process is Fast!</td>
<td>Process is Fast!</td>
</tr>
<tr>
<td>Need is overwhelming</td>
<td>Parties can be cash-strapped</td>
</tr>
<tr>
<td>Transferrable skills – litigation/client</td>
<td>UD Court is <strong>high context</strong></td>
</tr>
<tr>
<td>Jury trial opportunities</td>
<td>Process: must follow to a tee</td>
</tr>
<tr>
<td>Free training options</td>
<td>Clients are often in crisis</td>
</tr>
<tr>
<td>Pro bono / supervised opportunities</td>
<td>Array of overlapping laws</td>
</tr>
</tbody>
</table>

### EVICTION TIMELINE

**PRE-COVID** [USUALLY 2-6 MONTHS]

- **NOTICE** (e.g., 3 Day Notice to Pay or Quit; 60 Day Notice to Vacate)
- **SUMMONS & COMPLAINT**
- **TENANT**: 5 days to respond
- **LIMITED DISCOVERY**, if any
- **TRIAL** scheduled **3-4 weeks out**
  (tenant can demand jury) but post-Covid, much longer
Negotiations in the hallway:
- “Pay-and-Stay”
- “No-Dough-and-Go”
- Relocation Payment

Trial - bench or jury
- **Tenant wins:** likely must bring rent current within or process starts over
- **Tenant loses:** landlord gets “writ of possession” for Sheriff lockout (min. of 5 days after trial date)

Tenants who have a lawyer in court have high chance of winning, or at least reaching an agreement.

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**PANDEMIC-RELATED EMERGENCY TENANT PROTECTIONS**

CITY, COUNTY, STATE & FEDERAL

**EVictions:**
- Some resumed
- Some delayed until Feb. 1, 2021
- Some stopped forever ~~

Tenants can’t be evicted for unpaid rent between 3/1/2020-1/31/2021... IF tenant had Covid-19 hardship AND meets requirements

Landlords CAN sue in SMALL CLAIMS after 3/1/2021 (with no jurisdictional max)
2. SECURITY DEPOSIT DISPUTES

<table>
<thead>
<tr>
<th>Civil Code § 1950.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bad faith retention: 2x security deposit amount + actual damages</td>
</tr>
<tr>
<td>Attorney’s fees if provided in lease</td>
</tr>
<tr>
<td>* Demand Letter</td>
</tr>
<tr>
<td>* Small Claims coaching</td>
</tr>
<tr>
<td>* Limited / Small Claims / Unlimited</td>
</tr>
</tbody>
</table>

3. “AFFIRMATIVE LAWSUITS”
TENANTS VS. LANDLORDS

- Breach of rental agreement
- Discrimination (e.g., Unruh, FEHA, etc.)
- Harassment / retaliation
- Premises liability/PI/torts
- Public health / safety / habitability
- Rent control violations/overpaid rent
- Wrongful eviction
Limited-scope representation: lawyer and client agree that lawyer will handle some parts of the case; client will handle others.

This is in contrast to traditional arrangements, (lawyer hired to provide services on all aspects of a case, from start to finish.)

**LIMITED SCOPE OPPORTUNITIES**

* Counseling: procedure, options, possible outcomes
* Help filling out court forms
* Demand letters
* Discovery
* Coaching on presentation of evidence and testimony
* Settlement negotiations
* Reviewing settlement or repayment agreements
PBI provides free online training to teach pro bono attorneys about a variety of practice areas affecting low-income clients. While the trainings are geared toward attorneys, all who have a passion for advocating on behalf of low-income individuals are encouraged to use this site.

FREE ONLINE TRAINING: PRO BONO TRAINING INSTITUTE (PBTRAINING.ORG)
Maria Hall is a lawyer and director of Los Angeles Incubator Consortium (“LAIC”), a legal incubator that supports new attorneys who want to start their own law firms. Since its founding in 2015, more than 60 diverse lawyers have completed the program and have launched solo practices, providing affordable legal services throughout Los Angeles, with a focus on serving clients of limited means. Maria serves on Los Angeles County Bar Association’s Access to Justice Committee, and is the immediate past president of the Los Angeles Chapter of the National Lawyers Guild. She serves on the board of the Mexican American Bar Foundation, which has awarded over $2 million in scholarships. Maria was named Inspirational Alumna of the Year in 2017 by USC School of Law’s Latinx Law Students Association; received Southwestern Law School’s Public Service Program’s Award in 2018; and honored by the National Lawyers Guild-LA at its 2020 Annual Awards Celebration.
How to Pivot Your Practice

The Importance of Competence, Mentorship & Effective Communication

Presented by:
Erin Joyce, Erin Joyce Law
Jean Cha, Cha Law Ethics

Competence Mentorship Communication

Jean Cha
CHA LAW ETHICS
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Orange, CA  92868
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(a) Perform with Competence

(b) Apply the necessary (1) learning and skill and (2) mental, emotional, and physical ability reasonably necessary for the performance of such service.

“Admission of an attorney to the bar establishes that the State deems him competent to undertake the practice of law before all our courts, in all types of actions.” Smith v. Superior Court (1968) 68 Cal.2d 547, 559; In Re Johnson (1992) Cal.4th 689.
Be Ready to Adapt

Times are Changing
New Practice Area Exploration: Bankruptcy, Immigration, Wills, Trusts, and Estate Planning, Cannabis, Family Law, Landlord Tenant, Employment Law
You Don’t Know What You Don’t Know
Get the Training You Need
Do Your Due Diligence
Associate with Someone Who is Competent in the Area

Exercise Quality Judgment

- Legal malpractice claims usually arise from a lack of judgment, moral, ethical or legal (or a combination), on the part of the lawyer-defendant.

- Become sensitive to your need to develop the appropriate moral compass to guide decisions you make in your life. Without positive and ethical mentors, you may have observed the "it’s just the way things are done" approach that cuts corners and bends the rules. Attorneys should seek to do the right thing.
Ethical Problem-Solving Skills

- Clients may expect their attorneys to find solutions for them in creative ways. It does not mean that you should go beyond what may be within your professional discretion and pursue an approach or theory of the case that is not substantiated by a viable position, made in good faith, which is reasonable.
- Your creative thinking to devise solutions must be within both legal and ethical bounds. Be brave and tell your client the news they might not want to hear ... that the client can’t avoid paying a tax or cheat on their spouse legally. Turn to someone who is a specialist or has expertise in that practice area to develop effective and ethically sound representation.

Hone People Skills

You may be dealing with a new client base. You may be moving from a sole practice to a small firm. Your employment situation may be changing.

Lawyers must be able to deal with the politics in any organization, endear themselves to their employers, further develop client-relations skills, and know how to get along with and effectively manage support staff.

One of the often overlooked, yet most critical, skill attorneys fail to address is “people skills.” How to be social. Make small talk. Delegate, manage, and collaborate. How to deal with the difficult client. How to treat others with respect.
All lawyers need to be able to work effectively with others. Even a solo practitioner must deal with opposing counsel, court personnel and with co-counsel, on occasion.

Find a group of attorneys that creates a cooperative, team-based environment. You may find that even opposing counsel will offer helpful insight.

**Collaboration & Teamwork**

- Prioritize the work that needs to be done, meet deadlines and allocate time for continued learning. Do not make the mistake of failing to dive deeper into a practice area to reach a level of competence beyond the mere basics.

- There is a way to have time to rest and be engaged with family, work, volunteering, business development, exercise and having fun. Stay organized. Find a system that works for you.

**Organizational & Time Management Skills**
Knowing how clients in various businesses think, how they organize their efforts, and understanding their objectives are all important to establishing a good attorney-client relationship.

- Lawyers must be able to relate to the client’s particular circumstances and business or personal needs. This usually involves taking the time to understand the client as a person. If your client is a business, then become familiar with their industry. Stay informed.

- Clients are seeking guidance. You can be direct instead of saying “it depends” every time.

Supervising Others

If you have staff, you are responsible for their actions. Be clear with them that they need to familiarize themselves with the rules of ethics, should not commit the unauthorized practice of law, and should keep you informed with the status and progress on any matter they are handling.
Mentors / Mentees

Find a Mentor or Become a Mentor
The Profession Needs Mentors and Mentees to Ensure the Success of an Ethical and Competent Collective

Mentor Relationships are Various
Mentoring is fundamentally a relationship between a caring and experienced professional reaching into the life, and practice of, a generally (though not necessarily) younger and less experienced colleague.
Effective Mentoring is Intentional

- Systematically undertaken and not left to chance, nurturing
- Insightful, permissive of mistakes and growth by the protégé
- Supportive and protective, ultimately results in a transformation
- Growth of the mentee as an individual and professional

Mentoring:

Facilitates the transfer of valuable information and insight from seasoned lawyers to novice practitioners. Develops important skills, including:

1) Ability to obtain and keep clients
2) Understanding and conducting litigation
3) Counselling clients
4) Negotiating and
5) Diagnosing and planning solutions to legal problems
Clear Communication Will Address the Top Reasons for Negative Experiences:

- Neither party knows how to make it work
- Mentors do not want to be seen as potential employers
- Protégés do not see the benefit of the relationship
- Parties fail to continue the relationship, even when it starts out well
- Mentors feel underappreciated
- Newer lawyers prefer mentors who are closer to their age and who share a similar lifestyle
- Matching is difficult and administratively time-consuming
- The parties believe it will require time they would rather spend another way
- New lawyers don’t believe they need the help

THINK ABOUT HOW YOU CAN MAKE IT WORK

DO YOU NEED TO SEEK OUT THE ASSISTANCE OF MULTIPLE "DEVELOPERS" WHO PROVIDE VARYING AMOUNTS AND TYPES OF RELATIONAL SUPPORT, RATHER THAN RELYING ON A SINGLE MENTOR?
Communication Tips

• **Rule 1.4** Communications with client needs to be timely, should explain status so the client can understand, and must occur if there is a **significant development** relating to the presentation and in response to reasonable status requests.

• “How would you like to receive communications and updates? By Email, phone, mail? (Avoid texting when you can, so tracking those communications is simplified.)

• “How would like me to check-in with you? Do you want me to check in? Do you want me to give you a periodic update, if it’s something that’s going to take awhile? Would you like me to send email messages? May I call your cell phone if it’s important? May I leave a voicemail for you at your home number?”
Do I have a Duty to Translate Documents for Clients Who Speak a Foreign Language?

- COPRAC Opinion No. 1984-77: Issues of communication and competency arise when a lawyer takes on a case in which the client can only communicate in a language which the lawyer cannot.

- In a footnote, the Committee states that translating of critical documents, such as a contingency fee agreement, general release of claims, or a written waiver of a conflict of interest, may be essential to provide competent representation to a client who speaks a language different than the lawyer.

- When an attorney chooses to undertake representation of a non-English speaking client, the attorney must either make appropriate arrangements to ensure adequate communications with the client, such as an interpreter, or refer the case to someone else. *Gold v. State Bar* (1989) 49 Cal.3d 908, 264 Cal.Rptr.125, 782 P.2d 264

How should I communicate with my bilingual client?

- Ask them whether they have a preference.

- To adequately communicate with the client, both to keep the client informed of the case and the representation and to acquire the necessary information from the client, the lawyer should ensure that there is some means of communicating clearly with the client.

- This may include having an in-house interpreter competent in the client’s language or by translating material documents for the client.
Translations

If the client gives you documents, you must understand what they say and review them as part of your due diligence and competence, especially if it may be an exhibit.

*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rapt. 416, the Court found an attorney acted incompetently by failing to translate his client’s foreign-language documents into English for an asylum hearing. The Court did not accept the attorney’s contention that he did not have the knowledge of the Portuguese language to translate the documents and could not blame it on the client for not obtaining translations. The court held that, as the attorney, Respondent had the ultimate responsibility to ensure the documents were translated into English.

“Once it is evident that, without an interpreter, effective lawyer-client communications are questionable or not possible, failure of a lawyer to take steps to help the client understand the significance of the interpreter for adequate communication and to take, when necessary, steps to secure interpreter services may violate the lawyer’s duty to represent the client zealously.” *United States v. Mosquera*, 816 F. Supp. 168, 178 (E.D.N.Y. 1993)
Bar Rules for Attorney Advertising

- In 1977, the Supreme Court in *Bates v. Arizona State Bar*, 433 U.S. 350 (1977), held that lawyer advertising is partially protected by the First Amendment.

- The Supreme Court rejected the argument by the Arizona Bar that attorney advertising was "inherently misleading" and would "tarnish the dignified public image of the profession." The Court found "the postulated connection between advertising and the erosion of true professionalism to be severely strained," and noted that "lack of legal advertising could be viewed as the profession's failure to reach out and serve the community."

(626) 314-9050 erin@erinjoycelaw.com

Attorney Advertising

State Bar can ensure that attorney advertising is not misleading.

(626) 314-9050 erin@erinjoycelaw.com
(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through any written,* recorded or electronic means of communication, including public media.

The limits on forms of legal advertising is the attorney’s imagination.
Rule of Professional Conduct 7.2 -- Advertising

(b) A lawyer shall not compensate, promise or give anything of value to a person* for the purpose of recommending or securing the services of the lawyer or the lawyer's law firm,* except that a lawyer may:

(1) pay the reasonable* costs of advertisements or communications permitted by this rule;

(2) pay the usual charges of a legal services plan or a qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service established, sponsored and operated in accordance with the State Bar of California’s Minimum Standards for a Lawyer Referral Service in California;

(3) pay for a law practice in accordance with Rule 1.17;

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an arrangement not otherwise prohibited under these Rules or the State Bar Act that provides for the other person* to refer clients or customers to the lawyer, if:

   (i) the reciprocal referral arrangement is not exclusive; and
   (ii) the client is informed of the existence and nature of the arrangement;

(5) offer or give a gift or gratuity to a person* having made a recommendation resulting in the employment of the lawyer or the lawyer’s law firm,* provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.
Statutes Prohibit Capping and Improper Referral Arrangements

See Business and Professions Code Section 6150-6159.

Be careful of referral discussions with non-attorneys.

Any referral agreement which calls for consideration needs to be documented at the time of the arrangement under Rule 1.5.1.

Rule 7.1 – Communications Concerning a Lawyer’s Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the communication considered as a whole not materially misleading.
In re Morse, 11 Cal.4th 184 (1995)

Respondent sent out over $4 million advertisements offering assistance for homestead declarations which were misleading.

Ads implied false relationship with lenders.

Ads failed to explain that homeowners receive a homestead exemption even without recording the homestead exemption form.

More Clarity from the Comments to Rule 7.1

[2] A communication that contains an express guarantee or warranty of the result of a particular representation is a false or misleading communication under this rule. (See also, Bus. & Prof. Code, § 6157.2, subd. (a).)

[3] This rule prohibits truthful statements that are misleading. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if it is presented in a manner that creates a substantial* likelihood that it will lead a reasonable* person* to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable* factual foundation. Any communication that states or implies "no fee without recovery" is also misleading unless the communication also expressly discloses whether or not the client will be liable for costs.
Rule 7.3(e)

As used in this rule, the terms “solicitation” and “solicit” refer to an oral or written* targeted communication initiated by or on behalf of the lawyer that is directed to a specific person* and that offers to provide, or can reasonably* be understood as offering to provide, legal services.

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for doing so is the lawyer’s pecuniary gain, unless the person* contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer.

(626) 314-9050 erin@erinjoycelaw.com
Rule 7.3(b)

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if: (1) the person being solicited has made known to the lawyer a desire not to be solicited by the lawyer; or (2) the solicitation is transmitted in any manner which involves intrusion, coercion, duress or harassment.

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Rule 7.3(c)

Every written, recorded or electronic communication from a lawyer soliciting professional employment from any person known to be in need of legal services in a particular matter shall include the word “Advertisement” or words of similar import on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2), or unless it is apparent from the context that the communication is an advertisement.

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Rule 7.3(d)

Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person, live telephone or real-time electronic contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment 1 to Rule 7.3

[1] A lawyer's communication does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.
Rule 7.4
Communications of Fields of Practice and Specialization

(a) A lawyer shall not state that the lawyer is a certified specialist in a particular field of law, unless:

(1) the lawyer is currently certified as a specialist by the Board of Legal Specialization, or any other entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Trustees; and

(2) the name of the certifying organization is clearly identified in the communication.

(b) Notwithstanding paragraph (a), a lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer may also communicate that his or her practice specializes in, is limited to, or is concentrated in a particular field of law, subject to the requirements of Rule 7.1.

Legal Specialization

- Rule 9.35 of the 2019 California Rules of Court define a "certified specialist" as a California attorney who holds a current certificate as a specialist issued by the State Bar of California Board of Legal Specialization or any other entity approved by the State Bar to designate specialists.

- The California State Bar establishes and administers a program for certifying legal specialists and is authorized to certify other entities to certify legal specialists under rules adopted by the Board of Trustees of the State Bar.
Rule 7.5
Firm Names and Trade Names

(a) A lawyer shall not use a firm* name, trade name or other professional designation that violates Rule 7.1.

(b) A lawyer in private practice shall not use a firm* name, trade name or other professional designation that states or implies a relationship with a government agency or with a public or charitable legal services organization, or otherwise violates Rule 7.1.

(c) A lawyer shall not state or imply that the lawyer practices in or has a professional relationship with a law firm* or other organization unless that is the fact.

How about the Website?

- Although California's Rules of Professional Conduct do not specifically state website marketing is included in the advertising and solicitation rules, the State Bar Formal Ethics Opinion 2001-155 addressed online advertising.

- According to the Formal Ethics Opinion 2001-155, an attorney's website is governed by rules regulating attorney print advertising in the California Rules of Professional Conduct. The Formal Opinion also states an attorney's website is not considered a solicitation, but is considered a communication.
Be Careful with Testimonials

- The most persuasive content includes case results, testimonials or endorsements.
- Comment [4] to the new Rule 7.1 provides that even a truthful statement regarding the lawyer’s achievements on behalf of clients or former clients, or a testimonial or endorsement, may be misleading and thus a violation if “presented so as to lead a reasonable person to form an unjustified expectation” that they could obtain the same results.
- If the advertisement or solicitation guarantees or warrants a result, it is a presumptive violation and deemed a “false or misleading communication.” See Rule 7.1, comment 2.

Disclaimers – always a good idea

- There should be a disclaimer or disclosure on an attorney’s website to prevent false expectations.
- Additionally, the website should expressly or by context indicate the information is merely a communication or solicitation, so the reader does not misconstrue the information as a legal relationship or legal advice.
- Current Rule 7.2 does not require any disclaimer to be included, but it does note that a disclaimer might be necessary to avoid “creating unjustified expectations.”
Jean Cha is an attorney in Orange County, CA. Ms. Cha is a Former State Bar Prosecutor who served in the Office of Chief Trial Counsel of the State Bar of California for 13 years in Los Angeles, CA. Ms. Cha has handled every type of case the OCTC handles. Ms. Cha advises practitioners in Professional Liability, Legal Malpractice, State Bar Discipline Defense and Reinstatements, Moral Character and Admissions Matters, Disqualifications and Conflicts, Risk Management and Legal Ethics Consultations. Ms. Cha regularly tailors Continuing Legal Education Trainings and is a Legal Ethics Expert.

Ms. Cha is an active member in several trade organizations and is the Second Vice President of the Association of Discipline Defense Counsel (ADDC) where she is the Co-Chair of the Diversity and Inclusion Committee, the Membership Chair of the Association of Professional Responsibility Lawyers (APRL), a Member of the State Bar Board of Trustees newly formed Working Group on Closing the Justice Gap (CTJG Working Group) and a Sustaining Member of the Junior League of Orange County, CA (JL OCC). Ms. Cha also provides pro bono counsel in State Bar matters and is on a panel of Court-Appointed Counsel for the State Bar Court of California.

Ms. Cha is licensed to practice law in California, The United States District Court, Central District of CA, and Texas. She is a graduate of Syracuse University College of Law. While attending Syracuse University in Upstate New York, Ms. Cha focused on intellectual property, licensing and technology commercialization and received her Certificate in Law, Technology & Management. She was the President of the Syracuse University College of Law Women’s Law Caucus, member of the National Women’s Law Student Association and Treasurer of the Asian Pacific American Law Students’ Association. As Moot Court Coach, she led teams in three moot court competitions to first place in regionals and second place in nationals. Ms. Cha participated in the summer intern program at Royston Rayzor and a federal clerkship for United States District Court Judge Lynn N. Hughes in Houston, Texas. Thereafter, Ms. Cha was admitted to practice law in California in 2003. Before becoming an ethics sole practitioner, Ms. Cha was an associate with Manning & Kass, Ellrod, Ramirez, Trester LLP and Pansky Markle Attorneys at Law. Ms. Cha was admitted to practice law in Texas in 2017 and is a proud graduate of the University of Texas at Austin, TX with a Certificate in Business Foundations and a double major in Government and Political Science.
Erin Joyce
Pasadena Ethics Attorney

Attorney Erin Joyce has extensive experience in State Bar investigations and disciplinary proceedings, plus over twenty-five years of civil litigation practice.

Erin was admitted in 1990 and practiced for nearly eight years in an intellectual property boutique before joining the Office of Chief Trial Counsel as a prosecutor for the State Bar, from 1997 through 2016. Erin has almost twenty years of experience handling all aspects of discipline cases against attorneys in State Bar Court, from the filing of the complaint through trial and review. She has personally tried dozens of State Bar trials and several appeals. Erin has a comprehensive understanding of how State Bar investigations and proceedings unfold.

Before going into private practice, Erin served as Chief Special Investigator for the Los Angeles Fire Department, as a prosecutor for the State Bar of California, and as a lawyer for multiple private practices.

Erin’s practice areas include:

- State Bar Discipline
- Moral Character Determination Proceedings
- Reinstatements before the State Bar Court
- Professional Licensing
- Ethics Consultations

Education

- Southwestern School of Law, Los Angeles, California
  J.D. – 1990 (first in class)
- UCLA, Los Angeles, California
  B.A. – 1987 (history with certificate in business administration)

Professional Associations and Memberships

- Los Angeles County Bar Association, Member
- LACBA Networking Meeting Steering Committee, Chair
- LACBA Small Firms and Solo Practitioners Section, Chair
- Professional Responsibility and Ethics Committee of the Los Angeles County Bar, Member
- LACBA Delegation to Conference of California Bar Associations, Secretary
- Conference of California Bar Associations, Resolutions Committee Member
- Women in the Law Institute, Faculty
- California Lawyers Association, Member
- California Lawyers Association, Attorney Wellbeing Committee, Member
- California Lawyers Association, Small Firms Section, Member
- Association of Discipline Defense Counsel, Secretary to the Board
- Women Lawyers of Los Angeles, Member
- San Fernando Valley Bar Association Board of Trustees, Member
- Future of Lawyering Taskforce, Chair
- Practicing Law Institute, Faculty
- Continuing Education of the Bar, Faculty

Publications & Programs

- Program speaker on “How to Avoid a State Bar Complaint,” CAALA Convention, August 30, 2019
- Program speaker on “New Rules for the Small Firm Practitioner,” Eastern Bar Association, January 17, 2019
- Program speaker on “New Rules of Professional Conduct,” Los Angeles County Bar Association, January 31, 2019
- Program speaker on “Avoiding the State Bar Discipline System,” State Bar of California’s Solo and Small Firm Summit, June 2012
- Program speaker on “What You Don’t Know About Trust Accounting Can Get You Disbarred,” LACBA Ethics Symposium, January 2020
- Program Speaker on “Ethics for the Government Lawyer,” Los Angeles County Counsel, February 2020
- “The Perils of Flat Fee Agreements Under the New Rules of Professional Conduct,” LACBA Update, September 2019
- “Bar Proposals will Upend the Legal Profession,” Los Angeles Daily Journal, October 2, 2019
- “How to Avoid a State Bar Complaint,” CAALA’s The Advocate, December 2019 Edition
- “Practicing Law in Interesting Times,” California Lawyers Association’s website, May 2020