

# BRIDGING THE GAP

# WELCOME

## WELCOME TO BRIDGING THE GAP IN ORANGE COUNTY

The Orange County Bar Association and the Sponsors of today's program congratulate you and welcome you to Bridging the Gap.

This is the Orange County legal community's 31<sup>st</sup> year of providing new admittees a legal orientation program. The speakers and the materials will cover numerous practice areas, information on superior, state and administrative courts, as well as offer practical advice.

In order to make this program rewarding for you and the speakers, you are encouraged to ask questions and participate as the situation warrants. Further, your comments and suggestions, via the evaluation form, will assist in planning future programs.

We wish to express our appreciation to the judges, commissioners, attorneys, and speakers for volunteering their time and participating in today's program. A special thank you is extended to the program participants, the State Bar of California, the *Orange County Lawyer* magazine and especially *The Los Angeles Daily Journal* for supplying the Bridging the Gap syllabus.

#### **ORANGE COUNTY BAR ASSOCIATION**

John C. Hueston, Attorney at Law 2011 President

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Steven G. Hittelman, Attorney at Law Teresa A. McQueen, Attorney at Law

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### **ORANGE COUNTY BAR ASSOCIATION**

## **BRIDGING THE GAP PROGRAM**

Saturday, February 5, 2011

7:30 a.m 8:00 a.m.	Registration and Continental Breakfast			
8:00 a.m 8:15 a.m.	Welcome Mac Cabal, Attorney at Law, OCBA Young Lawyers Division Steven G. Hittelman, Attorney at Law Teresa A. McQueen, Attorney at Law			
8:15 a.m 9:15 a.m.	<b>Making Your Way Through Court</b> Roy L. Comer, Attorney at Law Stanton (Terry) Mathews, Attorney at Law			
9:15 a.m. – 10:15 a.m.	Law & Motion Hon. Elaine Streger Janet M. Christoffersen, Attorney at Law Nathan R. Scott, Attorney at Law			
10:15 a.m. – 10:30 a.m.	Morning Break			
	Breakout Sessi	ions		
10:30 a.m 11:30 a.m.	Criminal LaworHon. Ronald P. KreberHon. Andre ManssourianJeffrey C. Tatch, Attorney at Law	Elder Law/Probate Hon. Mary Fingal Schulte Joseph M. Geis, Attorney at Law Amy Haupert, Attorney at Law		
11:30 p.m12:30 p.m	Landlord/ TenantorLuis A. Barba, Attorney at LawKristen C. Lara, Attorney at Law	<b>Solo Practitioner</b> Tamsen R. Reinheimer, Attorney at Law Kayleene H. Writer, Attorney at Law		
12:30 p.m 1:30 p.m.	Lunch			
1:30 p.m 2:30 p.m.	<b>The Allen E. Broussard Panel on Profess</b> Hon. David A. Thompson, Assist. Presiding Judge Hon. Nancy Wieben Stock	ionalism and Civility Joseph L. Chairez, Attorney at Law Lei Lei Wang Ekvall, OCBA Immediate Past President		
Breakout Sessions				
2:30 p.m. – 3:30 p.m.	Family LaworHon. Lon HurwitzSteven G. Hittelman, Attorney at Law	<b>Employment/Labor Law</b> Beth K. Eagleson, Attorney at Law Brian J. Mills, Attorney at Law		
3:30 p.m. – 4:30 p.m.	<b>Immigration Law</b> Hon. Ashley Tabaddor Monica Lukoschek, Attorney at Law Lisa Ramirez, Attorney at Law	or Business Law Hon. Derek Hunt David Outwater, Attorney at Law Neil Pedersen, Attorney at Law		
4:30 p.m. – 5:00 p.m.	<b>Do What You Love, Love What You Do</b> Steven G. Hittelman, Attorney at Law Teresa A. McQueen, Attorney at Law			

# BRIDGING THE GAP

# FACULTY BIOGRAPHIES

#### HONORABLE DAVID A. THOMPSON, Superior Court Assistant Presiding Judge, County of Orange

Judge Thompson was appointed to the bench by Governor Pete Wilson in 1997. He is currently the Assistant Presiding Judge of the Orange County Superior Court. He has presided over all types of civil and criminal matters, including general jurisdiction civil jury and court trials, motions and settlement conferences, felony and misdemeanor jury trials, arraignments and pleas, as well as drug treatment court.

Before taking the bench, Judge Thompson was an attorney with Morrison & Foerster in Irvine. He handled general civil litigation including contract, business tort, construction defect and major product liability cases as a member of the litigation group in 1996 and 1997. He was involved in all aspects of acquisitions, sales and development of real property as a member of the real estate group from 1988 until 1996.

Judge Thompson was a civil litigation attorney with Rutan & Tucker in Costa Mesa as a member of the trial department from 1983 until 1988. He had a varied general trial practice, handling contract and business tort cases, subsidence litigation, product liability defense and landlord tenant disputes. He also handled numerous writs and appeals.

Judge Thompson was a staff attorney for Associate Justice Edward J. Wallin of the California Court of Appeal, Fourth Appellate District, Division Three in 1983. He prepared draft opinions and performed research for Justice Wallin and other members of the Court of Appeal. He was also an extern with Justice Wallin (then sitting as a Judge of the Orange County Superior Court) in 1982.

Judge Thompson received his Juris Doctor from the University of California at Los Angeles (Order of the Coif) in 1983 and his Bachelor of Science Degree in Business Administration and Finance from Georgetown University (Summa Cum Laude) in 1980. He was born in Pasadena, California in 1956 and was raised in Orange County.

#### HONORABLE DEREK HUNT, Superior Court, County of Orange

Appointed (succeeding Judge James L. Smith, retired) July 14, 1997 (oath August 4, 1997) by Governor Wilson. Admitted to California Bar 1972; Admitted to U.S. Court of Appeals, Ninth Circuit, and to U.S. District Court Central, Southern and Northern Districts.

**Employment:** Private practice 1981-97 Troy & Gould, Los Angeles, California; 1980-81 Stradling, Yocca, Carlson & Rauth, Newport Beach, California; 1977-80 Troy, Malin & Pottinger, Los Angeles, California; 1972-76 Mitchell, Silberberg & Knupp, Los Angeles, California. Employed in Congressional Liaison Office, Department of the Air Force (1966-67). Extensive experience in the fields of business law and entertainment litigation, including actions concerning securities fraud, securities class actions, international distribution agreements, corporate derivative actions, construction disputes, manufacturing agreements, breach of motion picture financing agreements, real estate and commercial law.

**Education:** J.D. 1972 Cornell University Law School, Ithaca, New York, Cornell Law Review (1970-71); Managing Editor (1971-72). A.B. 1965 Cornell University, Ithaca, New York. 1<sup>st</sup> Lieutenant, United States Army (1967-69), with service in the Republic of Vietnam and Federal Republic of Germany. Born June 15, 1943, Washington, D.C.

**Former Member:** Orange County Bar Association, Los Angeles County Bar Association, Century City Bar Association (Chairman of Litigation Section 1980), Association of Business Trial Lawyers, Los Angeles Complex Litigation Inn of Court.

Assignments: Civil Panel 1997-2004; Criminal Panel 2004-2005; Civil Panel 2005-present.

Office: Courthouse, Department C12, 700 Civic Center Drive West, Santa Ana, 92701, (714) 834-3750 (subject to change) or (714) 834-3734 (general number).

#### HONORABLE LON HURWITZ, Superior Court, County of Orange

Judge Hurwitz was elected in June 2010 and received an early Appointment by Governor Schwarzenegger in December 2010. He was assigned as a direct calendar inventory Family Law Judge in December 2010. Prior to that, he served as a Family Law Commissioner from 2005 through December 2010, as the Court's dedicated Domestic Violence Judicial Officer from 2008 to December 2010, and as a Child Support Commissioner from 2005 to 2008. He was elected to serve as a Commissioner by the Judges in 2004.

In 2008, he was appointed to the Judicial Council of California by Chief Justice Ron George and served on the Council until 2010.

#### HONORABLE RONALD P. KREBER, Superior Court, County of Orange

Succeeded to court upon majority vote of judges in county [pursuant to Prop. 220] to convert Municipal Courts to Superior Courts, effective August 10, 1998. Appointed to South Orange County Municipal Court (succeeding Judge David C. Velasquez, elevated) by Governor Deukmejian October 31, 1990 (oath November 18, 1990), and elected in 1992 (unopposed). Presiding Judge, 1992. Assistant Presiding Judge, 1991. Judge, Municipal Court, North Orange County Judicial District, Orange County, October 21, 1988 (date of oath) to November 18, 1990, appointed by Governor Deukmejian September 28, 1988. Served periodically on regular basis as Judge pro tempore, Municipal Court, Orange County Harbor Judicial District, Orange County, 1979-88. Private law practice, Newport Beach, CA, 1979-88 (sole practitioner, specializing in felony criminal defense). Deputy District Attorney, Orange County, 1972-79 (Special Assignments Grand Jury, September 1978 to May 1979; Narcotics Task Force, July 1974 to September 1978; Felony Panel, May 1973 to July 1974; and trial deputy, February 1972 to May 1973); Police Officer, Los Angeles Police Department, 1963-72. Worked in electronics industry, 1960-63. United States Marine Corps 1956-59.

LL.B. (1971), West Los Angeles School of Law, Los Angeles, CA (Student body President, 1971; member, Law Review, and author of Law Review article, "Knock Notice by Police Before Entry Into a Home"). Attended: University of Southern California Law Center, Los Angeles (March - May 1975 and 1976, specialist classes); Southwestern School of Law, Los Angeles (January 1966 to June 1967); Loyola (now Loyola Marymount) University, Los Angeles (September 1963 to December 1965); and Arizona State University, Tempe, AZ (June - September 1959). Admitted to California Bar January 5, 1972; and to U.S. District Court, Central District of California, January 1972, Southern District of California, February 1981, and Northern and Eastern Districts of California, October 1986.

Member: California Judges Association, 1988 - ; Orange County Federal Bar Association, 1987 - (Founding Member; member, Board of Directors, 1987; Criminal Law Seminar Co-chair, 1987); Orange County Bar Association, 1971 - (Founder's Circle Member; Co-chair, (1986-88) and Activities Chair (1979-87), Hawaii Law Seminar); South Orange County Bar Association, 1984 - (Treasurer, 1988); Newport Harbor Bar Association, 1979 - (President, 1986; Treasurer, 1984-85); and Rotary Club, Laguna Beach, 1981 - (currently inactive). Former member: Orange County Trial Lawyers Association, 1984-88 (Board of Directors, 1984 and 1982); Association of Specialized Criminal Defense Advocates, 1981-88 (Secretary/Treasurer, 1986-88); and Orange County Narcotics Officers Association, 1974-88. Patron, American Paralysis Association, Orange County Guild, 1987- 88. Football booster, Laguna Beach High School and Mater Dei High School, 1984. Named "Municipal Court Judge of the Year" (1995) by the Orange County Trial Lawyers' Association. Born March 18, 1937; Yankton, South Dakota. Married. Three Children. Republican (was an active supporter of candidates; members of Solidarity Program in Support of Incumbent Judge.

#### HONORABLE ANDRE MANSSOURIAN, Superior Court, County of Orange

I am a graduate of UC-Santa Barbara in 1994 with a B.A. degree in Political Science. After graduation, I immediately entered Santa Clara University School of Law and graduated with a J.D. in 1997.

After taking the bar exam in July 1997, I began working as a law clerk with the OC District Attorney's office Homicide Unit while waiting for bar results. After being admitted to the bar, I began working as a private attorney alongside two solo practitioners in Orange County who worked mainly in criminal defense.

In March of 2000, I was sworn in as an Orange County deputy district attorney. I was assigned to the juvenile unit where I did court trials and hearing. Following that assignment, I moved to our misdemeanor trials unit where I handled misdemeanor cases at all stages of the proceedings. After doing over 30 misdemeanor jury trials and countless preliminary hearings and motions, I advanced to the felony jury trial unit. During that 18 month assignment, I did jury trials on such cases as robbery, carjacking, pimping, drugs for sale and attempted murder.

In 2006, I was promoted to the Special Prosecutions Unit where I handled a wide variety of unique cases generally of a high profile nature that garnered media attention. Frequently, the cases involved high profile defendants or high profile victims of crime. The offenses included political corruption, bribery, crimes involving police officers as defendants, crimes involving dignitaries such as judges, sheriffs, or other elected officials, and crimes committed by public officials and employees.

On June 8, 2010, during the California Primary Election, I was elected to the Orange County Superior Court. I was sworn in as a Superior Court Judge on January 3, 2011 and was immediately assigned to the Harbor Justice Center. Here at Harbor Court I am specifically designated as a trial court which means I handle misdemeanor jury trials and preliminary hearings.

#### HONORABLE MARY FINGAL SCHULTE, Superior Court, County of Orange

Judge Schulte is a judge of the Orange County Superior Court and is currently the Supervising Judge for the Probate/Mental Health Panel. Judge Schulte began her legal career as a Deputy District Attorney for the Orange County District Attorney's Office. She was then in private practice in Orange County for 14 years as a business and tort trial attorney, including nine years as a partner at Martin, Wilson, Fingal & MacDowell, with an emphasis in construction, premises and products liability litigation and medical malpractice defense.

Judge Schulte was appointed to the bench in 1997. Since her appointment, she has presided over criminal trials, civil trials, family law trials, and probate and mental health cases. From 2001 through 2003 Judge Schulte was the Supervising Judge for the West Justice Center, and since 2009 she has been the Supervising Judge for the Probate/Mental Health Panel.

Judge Schulte has been actively and extensively involved in the Orange County legal community throughout her career. She has been a lecturer and panelist on a wide range of legal subjects, including trial practices. Judge Schulte has also been involved with the Banyard Inn of Court as a member, director, master bencher and as its president for 2010-2011. Judge Schulte has been a coach and volunteer judge of the Constitutional Rights Foundation's Mock Trial program, is a member and former chairperson of the Orange County Superior Court's Temporary Judge Committee, and is a member of the Orange County Superior Court's Executive Committee. She is also a volunteer with a hospice organization.

#### HONORABLE ELAINE STREGER, Superior Court, County of Orange

Judge Elaine Streger was appointed by Governor Wilson and sworn in by Chief Justice Ronald George on February 28, 1997. Prior to her appointment, she served 15 years on the Orange County Superior Court Legal Research Department, the last nine as Supervising Attorney. She was also an Adjunct Professor at Western State University School of Law and was in private practice from 1979 - 82. She is a past president (1990) of the OCWLA (Orange County Women Lawyers Association) and was chosen Outstanding Lawyer of the year in 1995 by OCWLA. Judge Streger received her B.S. degree cum laude (with a major in chemistry) from Brooklyn College. Prior to starting law school in 1975, she had worked as a research biochemist in the pharmaceutical industry, as a junior high school science teacher and as a Tupperware Lady. She received her JD summa cum laude from Irvine University School of Law and has been an active participant in the community, serving as a Reserve Deputy in the Orange County Sheriff's Department from 1983 – 87, and frequently lecturing on legal topics, particularly civil law and motion.

#### HONORABLE ASHLEY TABADDOR, Immigration Court

Judge Tabaddor was appointed as an Immigration Judge in November of 2005 by the US Attorney General. Prior to her appointment, she served as an Assistant U.S. Attorney for the Central District of California in Los Angeles. She has also served as a trial attorney with the Justice Department's Civil Division in Washington D.C, and as a law clerk and attorney advisor for the Immigration Court and the Chief Immigration Judge. She received her Bachelor of Arts degree (*with honors*) in 1994 from the University of California, Los Angeles, and her Juris Doctorate in 1997 from the University of California, Hastings College of the Law.

In addition to her duties as a judge, Judge Tabaddor has served as an adjunct professor at a number of law schools, including USC & George Washington Law Schools. She is currently teaching an advanced seminar on Immigration Law and Crimes at UCLA Law School.

#### HONORABLE NANCY WIEBEN STOCK, Superior Court, County of Orange

Judge, Superior Court, State of California, County of Orange (1990-Present). Appointed by Governor George Deukmejian on January 23, 1990. Complex Civil Panel, 2009-present; Presiding Judge, 2006-2009; Assistant Presiding Judge, 2003-2005; Supervising Judge Family Panel, 2001-03, Presiding Judge Superior Court Appellate Division, 2001-03. Prior Assignments: Felony Trials; General Civil Direct Calendar.

Assistant United States Attorney, Chief of Santa Ana Branch of the United States Attorney's Office (1988-90). Chief Major Crimes, Chief of Training, First Assistant to the Chief of the Criminal Division, U.S. Attorney's Office, Los Angeles, CA (1978-88). Associate Attorney, Friedemann & Menke, Orange, CA (1976-78)

Education:	University of California, Davis, J.D. 1976 University of California, Davis, B.A. Political Science, 1973
Bar Admissions:	State of California, 1976 U. S. District Court, C.D. California, 1978 Ninth Circuit Court of Appeals, 1979
Member:	Judicial Council of California, Advisory Member 2007-2009 Presiding Judges Advisory Committee, Chair, 2007-2009 Association of Business Trial Lawyers, Board of Directors U.C. Davis Foundation Board, Trustee, (1998-2001) USC Inter-fraternity Parent Council (2004-06) Federal Bar Association, Board of Directors (1989-91) National Association of Women Judges, Life Member
Honors:	<ul> <li>American College of Trial Lawyers, Excellence in Advocacy Award</li> <li>Constitutional Rights Foundation O.C., Judge of the Year, 1993</li> <li>Orange County Women Lawyers, Judge of the Year, 1995</li> <li>National Center for Missing &amp; Exploited Children, Appreciation Award</li> <li>U. S. Department of Justice Special Achievement Award</li> <li>Director's Award, Department of Treasury, Outstanding Service in the Public Interest; Arson Task Force</li> <li>U.C. Davis, Martin Luther King Hall Law School, Distinguished Alumnus</li> <li>Orange County Trial Lawyers, Jerrold Oliver Award, for AJudicial Integrity, Compassion &amp; Courage, 1997</li> <li>American Board of Trial Advocates [ABOTA] Orange County Chapter, Judge of the Year, 1997</li> <li>Consumer Attorneys of California, Judicial Integrity Award, 1997</li> <li>American Academy of Matrimonial Lawyers, Distinguished Jurist, 2003</li> </ul>

#### LUIS A. BARBA, Attorney at Law

Luis A. Barba is Of Counsel to the Law Offices of Axelrod & Associates, Inc. located in Irvine. He is licensed to practice in the states of California and Nevada. His practice is focused in the areas of Family Law where he handles virtually all aspects including property division, child custody/visitation, child support, spousal support, pre-marital and post-marital agreements, and domestic violence issues; and Civil Litigation including business litigation, real estate matters, landlord/tenant, and collections.

Mr. Barba also practiced law for the firm of Todd, Ferentz, Bowne & Barba handling general civil litigation matters with an emphasis on securities litigation representing investors who had lost monies in the stock market due to fraudulent broker-dealer practices going against such firms as UBS Financial Services, Merrill Lynch, and Morgan Stanley. He helped his clients recover close to \$1million of investment losses.

Mr. Barba earned his law degree from Southwestern University School of Law, graduating in the top 20% of his class. He was also associate editor of Southwestern Law Review and received the Dean's merit scholarship. Prior to attending law school, Luis worked for the Public Defender's office assisting in child placement. He also worked with the Fraternal Order of Police in Washington, D.C., as a lobbyist.

Mr. Barba currently sits on the Board of Directors for the Orange County Hispanic Bar Association, a non-profit organization dedicated to promoting education, unity and excellence in the Hispanic legal community.

#### MAC CABAL, Attorney at Law, OCBA Young Lawyers Division

Mac W. Cabal is an associate with the law firm of Lanak & Hanna, P.C. His practice areas include business litigation, commercial collections, and surety defense.

Mr. Cabal is an Ivy League graduate, graduating from Cornell University with a degree in Business Management. Upon graduation, he worked as an Executive for two of the largest retail companies in the country managing an 80 million dollar denim business. After working as an Executive for five years, he attended Whittier Law School, graduating in the top 5% of his class and receiving a Full Tuition Merit Scholarship and Stipend.

In his free time, Mr. Cabal enjoys strumming his guitar, reading, and surfing.

#### JOSEPH L. CHAIREZ, Attorney at Law

Joseph Chairez is a partner in the Costa Mesa office of the national law firm of Baker & Hostetler. As an experienced litigator, Mr. Chairez has successfully handled a broad range of complex litigation including insurance coverage, products liability, labor and employment matters and environmental cost recovery. Mr. Chairez is a featured speaker at Continuing Legal Education Seminars on equal access to justice issues, trial practice and insurance coverage litigation.

Mr. Chairez is a Governor on the Board of Governors of the State Bar of California, where he serves on various committees, including as State Bar liaison to the California Commission on Access to Justice. Mr. Chairez is the immediate past co-chair of the California Commission on Access to Justice, where he also served as vice-chair of the Language Barrier Committee. For the State Bar, Mr. Chairez has been a member of the Diversity Pipeline Task Force and the Justice Gap Fund Task Force.

Mr. Chairez is the past President of the Orange County Bar Association and immediate past President of the OCBA Charitable Fund. He is a past President of the Orange County Hispanic Bar Association, the Celtic Bar Association and a

member of the Executive Committee of the Hispanic Education Endowment Fund. He is on the Board of Directors of the El Viento Foundation and former Board member of the Public Law Center.

Mr. Chairez received his Bachelor of Arts degree from University of California at Berkeley and his Juris Doctorate from University of California at Davis School of Law.

#### JANET M. CHRISTOFFERSEN, Attorney at Law

Ms. Christoffersen is a Research Attorney for the Orange County Superior Court, currently assigned to the Civil Law and Motion Section of the Legal Research Department. She received her undergraduate degree from UCLA and her J.D. from Southwestern University School of Law. Prior to joining the Legal Research Department in 2001, Ms. Christoffersen worked as an attorney for over 20 years in civil litigation, plaintiff and defense, sat as judge pro tem in Orange County's North Branch courthouse, and was on the court-appointed panel of arbitrators for San Bernardino County Superior Court, Rancho Cucamonga.

#### ROY L. COMER, Attorney at Law

Roy L. Comer received his BA from UC Irvine, and his JD from Western State University, College of Law, Fullerton, where he served as Executive Editor of the Law Review. He is an AV rated sole practitioner with his office in Newport Beach. Since 1978, Mr. Comer's practice has been equally balanced between representing plaintiffs and defendants, particularly specializing in major tort (including auto, premises, products, professional and governmental liability) and business litigation. Mr. Comer is an Adjunct Professor of Civil Procedure at Trinity University College of Law in Santa Ana. He has served as a Delegate to the State Bar Convention, is a former President of the Orange County Barrister (now Orange County Young Lawyers) is a former Director of the OCBA, and a former chair of the Bridging the Gap committee. He has been a guest speaker at numerous seminars sponsored by the OCBA, including the Orange County College of Trial Advocacy, and has served as a Temporary Judge in Orange County Superior Court on the Mandatory Settlement Conference and Arbitrator's panel for the OC Superior Court since 1988. He is also a member of Daniel's Inn.

#### BETH K. EAGLESON, Attorney at Law

During her career, Ms. Eagleson has represented both plaintiffs and defendants in employment and other civil matters, as insurance defense counsel, senior in-house litigation and advice counsel to Sempra Energy, and its subsidiaries San Diego Gas & Electric Company and Southern California Gas Company, and, currently, in her own solo practice in San Clemente. She has tried and arbitrated numerous employment and traditional labor cases. Ms. Eagleson has been an active participant in several bar associations, and law-related and non-law-related organizations. She is currently a member of the Judicial Nominees Evaluation Commission (JNE) of the State Bar of California.

#### JOSEPH M. GEIS, Attorney at Law

Joseph M. Geis is in private practice at the Elder Law Center, located in Laguna Hills California. His practice areas include Estate Planning, Probate, Trust Administration, Conservatorships, Guardianships, Medi-Cal planning and other Elder Law issues. Mr. Geis earned his B.S. degree from Brigham Young University in 1990, and his J.D. degree from the J. Reuben Clark Law School of Brigham Young University in 1997. Mr. Geis was admitted to the California Bar in 1997.

Mr. Geis is currently the chair of Orange County Bar Association's Trusts and Estates Section. He is a frequent presenter for the OCBA Bridging the Gap program. He is also a member of the Elder Law Section of the Orange County Bar Association.

#### AMY E. HAUPERT, Attorney at Law

Amy E. Haupert is in private practice with the Law Office of Fay Blix, in Laguna Hills, California. Her practice areas include estate planning, trust administration, probate, limited Conservatorships and elder law. Amy earned her B.A. degree from San Diego State University in 1991 and her law degree from McGeorge School of Law, University of the Pacific in 1996.

Amy has served on the Executive Board of the Trusts and Estate Section of the Orange County Bar Association for the past 6 years and is the past 2010 Chair of the Board. She is a regular speaker at various venues, including the Bridging the Gap program presented by the Orange County Bar Association. She is a member of the Elder Law section of the Orange County Bar Association and was also accepted as a member of Cambridge Who's Who of Executives, Professionals and Entrepreneurs.

#### STEVEN G. HITTELMAN, Attorney at Law

Steven G. Hlttelman was born in Los Angeles, California in 1962. He graduated from California State University, Northridge (B.A. 1986) and Southwestern University School of Law (J.D. 1994). He was admitted to the California Bar in 1995 and has been named a Certified Specialist in Family Law by the State Bar of California Board of Legal Specialization since 2001. Mr. Hittelman was a Deputy District Attorney for Orange County, California (1995-1997), then senior associate at Minyard Morris LLP. Mr. Hittelman was listed as a Super Lawyer in 2005 – 2010.

Mr. Hittelman's publications include "License Suspension as an Enforcement Tool: A Roadmap to District Attorney Enforcement of Arrears through *Welfare & Institutions Code* Section 11350.6, Orange County Lawyer (June, 1997); "U.I.F.S.A., F.F.C.C.S.O.A., C.EJ. – Deciphering Interstate Support Obligations" Orange County Lawyer (June, 1998); "Spousal Torts: All's Fair in Love and War", Orange County Lawyer (February, 1999) and "Behind the Scenes at Bridging the Gap" Orange County Lawyer (June 2009).

Mr. Hittelman has been an instructor for "Bridging the Gap", Orange County Bar Association and Barristers (2002-2010); "Domestic Violence Legal Clinic Training" Orange County Bar Association and the Public Law Center (2001-2010); "Hot Cases and Cool Technology" Orange County Bar Association, Family Law Section (1997); "An Attorney's Guide to the Orange County District Attorney's Office, Orange County Bar Association, Family Law Section (1995-1997); "All You Ever Wanted to Know About Child Support, Orange County Barristers (1996); "Family Law Basic Training" Public Law Center (1998, 2000, 2003, 2008); Strange Bed Fellows: D.A. & Private Bar Support Enforcement Procedures, Orange County Bar Association, Family Law Section (1999); "Down and Dirty with Walrath", California State Bar Conference, (1999); "Children's Changing Developmental Needs as a Basis for a Legal Change of Circumstances" Association of Family and Conciliation Courts Southwest Regional and California Conference (1999); "Not All's Fair", State Bar Section Education Institute (Spring 2000); "California Family Law Practice," National Business Institute (2005); and "Obtaining the Best Result For Your Client in a Marital Dissolution," National Business Institute (2005); "Handling Move Away Cases", Legal Aid Association of California, Annual Family Law Conference (2008); Public Law Center Training on Custody and Visitation (2008); Mr. Hittelman is interviewed on KOCE TV "Real Orange" broadcast for "Call-A-Lawyer" program (2008).

Mr. Hlttelman is a member of the Board of Directors of the Orange County Bar Association, is currently serving as cochair of the Bridging the Gap Committee (2006 - 2010) and is a member of the Orange County Bar Association's Blue Ribbon Committee on the Administration of Justice (2004-2005, 2007-2010). He is also a member of the Beverly Hills Bar Association (Member, Family Law Section) the Los Angeles County Bar Association (Member, Family Law Section) and the State Bar of California. Mr. Hittelman was a member of Executive Committee of the Orange County Bar Association Family Law Section from 2001 through 2004, where he was Secretary (2001), Treasurer (2002), Vice President (2003) and President (2004). He has been a member of the Family Law Section's Education Committee (1997-1999); Legislative Committee (1996-2004); D.A.. Liaison Committee Chair (1998-2001); and Public Outreach Committee (Chair) (2005). He has been a Committee Member (1999-2008) and Chair (2000) of the State Bar of California Family Law Section, Property South Committee; He served on the Children's Issues Committee (South, 2005-2008) of the California State Bar, and a Barrister with the William P. Gray Legion Lex Inn of Court (Barrister, 2000 – 2010). He is also a Founding Fellow of the Society of Fellows of the Orange County Bar Foundation. Mr. Hittelman has served as a Judge Pro Tem in both Los Angeles Superior Court and Orange County Superior Court.

Mr. Hittelman's reported cases include Haywood v. LA.S.C. (Haywood) (2000) 77 Cal.App. 4th 949.

Mr. Hittelman is a named partner at the Family Law specialty firm of Nelson+Hittelman, LLP.

#### KRISTEN C. LARA, Attorney at Law

Kristen Lara graduated *cum laude* from the University of California, Los Angeles, in 2003 with a B.A. in English and Women's Studies. She received her J.D. in 2007 from Loyola Law School, Los Angeles.

After law school, Kristen joined the Public Law Center, Orange County's *pro bono* law firm, as an Equal Justice Works AmeriCorps Fellow. Through her fellowship, she assisted low income clients with family law matters such as dissolution, child custody and visitation, domestic violence, and guardianship.

When her fellowship ended, Kristen joined the Public Law Center staff as the Housing & Homelessness Attorney. She currently assists clients with housing issues such as eviction defense, habitability, mobile homeownership, and subsidized housing benefits. She also coordinates PLC's Homeless Advocacy Project which provides free legal services to the homeless through weekly legal clinics at Share Our Selves and, in the winter, at the National Guard Armory Homeless Shelters.

Kristen serves on the OCBA's Community Outreach Committee, which creates opportunities for members of the bar to participate in community service and other charitable events. She also serves on the Board of Directors of the Orange County Hispanic Bar Association. She is also an active member of the OCBA's Young Lawyer's Division and plays for the YLD's softball team, the Bad News Bearristers.

#### MONICA E. LUKOSCHEK, Attorney at Law

Monica E. Lukoschek has been practicing exclusively in the area of U.S. immigration and nationality law since 1987. She is a graduate, *Cum Laude*, of the University of California, Hastings College of the Law and received her undergraduate degree at the University of California, Los Angeles. After a decade working in the Immigration Departments of two major law firms, Ms. Lukoschek co-founded a boutique immigration law firm in Irvine. In December 2001, she founded the Law Offices of Monica E. Lukoschek, APLC in Laguna Hills. She is now a founding partner of U.S. Immigration Law Group, LLP in Santa Ana, where she provides guidance and representation to individuals and businesses regarding employment- and family-based immigration, such as labor certification and the full spectrum of immigrant and non-immigrant visa petitions and applications, as well as providing legal advice on avoiding the immigration consequences of mergers, acquisitions, and corporate restructuring.

Ms. Lukoschek is a member of the American Immigration Lawyers Association, the Orange County Bar Association, Immigration Section (Vice Chair 2003, Chair2004), and is a former President of the Orange County Hispanic Bar Association. She is a frequent lecturer in immigration law. She is proud to be a first-born American of immigrant parents.

#### STANTON (TERRY) MATHEWS, Attorney at Law

Firm principal of Mathews, Funk & Associates, a firm recognized for its expertise in civil jury trial work. The firm is frequently retained by individuals and organizations on cases involving injury in bad faith, professional negligence, fraud and unfair business practices. He has represented a broad spectrum of catastrophically injured persons including those with spinal cord and brain injuries, severe burns, and birth injuries. Mr. Mathews is a member of the Bar Registry of Preeminent Lawyers and the Million Dollar Advocates (a group reserved for trial lawyers with qualifying jury verdicts). He is listed in Who's Who in American Law and is among the select group of attorneys who have attained the prestigious "AV" rating. He is the author of the practice ^P treatise for attorney's "California Causes of Action."

#### TERESA A. MCQUEEN, Attorney at Law

Ms. McQueen is a skilled communicator and a published author in the area of Water Law. Prior to joining Pedersen Law & Dispute Resolution Corporation in January 2006, Ms. McQueen established her own solo law practice in 2003 where she developed a strong knowledge and experience base as a general business counselor.

At Pedersen Law, Ms. McQueen specializes in providing transactional and administrative law services to a diverse client base which runs the gamut from corporations and LLC's to individual entrepreneurs, professionals and individuals. As the firm's "Transactional Department" Ms. McQueen works diligently with her clients assisting them in developing/auditing Employee Handbooks, creating forms, policies, practices and procedures for the proper implementation of human resource functions. She also represents clients in negotiating and drafting stock/asset purchase agreements, assisting with entity formation, buy/sell agreements, real estate matters (negotiations and litigation) and representation in administrative proceedings before the Division of Labor Standards Enforcement. Although primarily the firm's transactional attorney, Teresa also represents clients in both real property and elder abuse litigation matters.

Ms. McQueen is admitted to practice before all California state courts.

#### **EDUCATION & TRAINING**

J.D., Chapman University School of Law, Orange, CA, May 2002 Bachelor of Dance, University of Idaho, Moscow, ID, December 1988

#### PUBLICATIONS

- *California Motions in Limine*, Published by Esquire One Publishing, May 2000, updated October 2001 (Research Assistant First Edition, May 2000, Editor/Co-Author and Research Advisor 2001 Update, October 2001)
- *Beyond Litigation: Case Studies in Water Rights Disputes,* Published by the Environmental Law Institute, January 2002, Chapter 3 pages 79-101. (Student author, First Edition, January 2002)
- *Tulare Lake Basin Water Storage District, et al., v. United States: Takings Victory or ESA Reform Test Case?* Hot Topics Report Published in the ABA Nat'l Quarterly on State and Local Govt. Law the *Urban Lawyer* Vol. No. 37, Issue No. 3. (Summer 2005)
- *Op-Ed: California Attorney Guidelines of Civility and Professionalism* Big News Magazine of the Solo/Small Firm Section of the State Bar of California (November-December 2007)

#### **SEMINARS & LECTURES**

- *Solo/Small Firm Practice* (July 2006) Orange County Bar Association Bridging the Gap: Presentation on starting a solo/small firm practice.
- *Human Resources 101 For Small Businesses* (October 2007) ADP Payroll Services: Panel presentation on basic things every employer should know: Hiring Process, Classifying Employees, Offers of Employment, Policies and Procedures, Handling Problems, and Termination and Exit Interview Process.
- *Ethics and the Implications of the New Civility Rules of Professional Conduct* (January 2008) State Bar of California Section Education Institute 2008: Panel presentation on the State Bar's new civility rules and their impact on the everyday practice of law.

#### **PROFESSIONAL AFFILIATIONS & ACHIEVEMENTS**

- Selected as a *Southern California Super Lawyers* "Rising Star" by Law & Politics and the publishers of *Los Angeles Magazine* for 2007
- State Bar of California (Bar Number 225094)
  - o Solo and Small Firm Executive Committee Member 2006 2008
  - Environmental Law Section Member
  - o Conference of Delegates of California Bar Associations: OCBA Delegate
- Orange County Bar Association Member:
  - o OCBA Board Member Elected Term 2008 2011; YLD Appointee 2007
  - o Solo/Small Firm Section Section Chair 2006; Section Secretary 2005
  - o Solo/Small Firm Section Executive Board Member 2003 Present
  - o Young Lawyers Division Chair 2007; Chair-Elect 2006; Ed. Comm. Chair 2005;
  - Appointments Committee Member 2007
  - Law Day Committee Chair 2007, 2006
  - Bridging the Gap Committee Member 2006 Present
  - o Resolutions Committee Employment Law Specialty Group 2003 Present
- American Bar Association Member:
  - o State and Local Government Law Section Member
  - o Environment, Energy & Resources Section Member
    - Agricultural Management Committee Member
      - Water Resources Committee Member
  - Orange County VIP Mentors Board Member 2006 Present
- City of Costa Mesa Traffic Ad Hoc Committee Resident Member
- Volunteer Pro Bono Attorney Public Law Center

#### BRIAN J. MILLS, Attorney at Law

Practice concentrated in employment litigation and counseling. Represents employers in all areas of employment law, including litigation involving wrongful termination; retaliation; sexual harassment and discrimination based on age, race, disability and sex; wage and hour issues; Labor Code § 132a claims; trade secrets; and unfair competition and business practices. Counsels employers regarding all aspects of the employer-employee relationship including development of employee handbooks and policy and procedure manuals. Also advises businesses on federal and state public accommodation access laws. Attorney with Snell & Wilmer, LLP in Costa Mesa, California. Graduated Loyola University of New Orleans School of Law (J.D. magna cum laude); North Carolina State University (Master's Program in Experimental Psychology); University of California at Irvine (B.A. Psychology).

#### DAVID E. OUTWATER, Attorney at Law

#### doutwater@oplawyers.com

#### **Areas of Practice:**

- Business Litigation
- Contract Disputes
- Real Estate Litigation
- Employment Litigation

#### **Bar Admissions:**

- California, 1995
- U.S. District Court, Central and Southern Districts of California, 1995
- Ninth Circuit Court of Appeals, 1995

#### **Published Opinions:**

• Avikian v. WTC Financial Corp.

(2002) 98 Cal. App. 4th 1108

• Nova Designs, Inc. v. International PADI, Inc. (9th Cir. 2000) 202 F. 3d 1088

#### **Education:**

- J.D., University of California 1995 (Order of the Coif)
- B.S., California Polytechnic, San Luis Obispo 1992 (with honors)

#### **Professional Associations and Memberships:**

- State Bar of California
- Orange County Bar Association
- Orange County Trial Lawyers Association
- Federal Bar Association Orange County, Board of Directors, 2006-Present
- Constitutional Rights Foundation OC, Board of Directors, 2006-Present
- Lead Coach, Woodbridge High School 1997 Present County Champions: 1998-1999, 2000-2001, 2001-2002, 2002-2003, 2004-2005, 2006-2007, 2008-2009 Coach of the Year: 1999-2000, 2008-2009
- William P. Gray Legion Lex Inn of Court

#### NEIL PEDERSEN, Attorney at Law

Neil Pedersen is the principal of the Pedersen Law & Dispute Resolution Corporation, an Irvine firm. He has successfully operated a small firm in Orange County for most of his 20+ year career as an attorney.

His firm presently employs four attorneys and a staff of several other people dedicated to representing individuals and entities in employment, insurance and business disputes, as well as providing general counsel services to small and medium sized companies.

Neil graduated magna cum laude from Western State University College of Law in 1988 as co-Valedictorian and Editorin-Chief of the Law Review. He has recently been inducted into that law school's Alumni Hall of Fame. He has served as Chair of the OCBA Insurance Law Section, and is a fee arbitrator and mediator with the OCBA Mandatory Fee Arbitration Committee. Neil is also trained in specialized faith-based dispute resolution procedures used by Christians who find themselves embroiled in disagreement.

Neil has been a member of the Orange County Bar Association Solo and Small Firm Practitioner Section for many years, and served on its executive board for five years. He regularly lectures and writes on subjects about law practice management, including issues related to time management, business development, client relations and technology in the law office. Neil was the Program Chair for the annual seminar sponsored by the Solo and Small Firm Section on Opening and Maintaining a Law Firm, and was the panel facilitator/moderator for three years. Last year he was one of the panelists at that seminar.

Neil's present primary area of practice is the representation of employees in harassment, discrimination and retaliation litigation, as well as active supervision of all other litigation and general counsel services provided by his firm.

Neil and his team have procured significant six and seven-figure verdicts and settlements for his clients over the years, including a \$62 million jury verdict in 1990, and a \$9.7 million jury verdict in 2003.

Neil has been married 25 years to Janelle, who he met in law school. He has three adult children and six grandchildren.

#### LISA RAMIREZ, Attorney at Law

Ms. Ramirez has been practicing exclusively in the area of U.S. Immigration and Nationality Law since 2000. She is a graduate of Loyola Law School, Los Angeles and a recipient of Loyola's Public Interest Fellowship. She completed her

undergraduate degree at Scripps College, a member of the prestigious Claremont Colleges.

After graduating from law school, Ms. Ramirez served as the Director of Legal Services and Advocacy at Catholic Charities of Orange County. Afterwards, she continued her work at the Public Law Center where she developed their legal immigration services program and was an advocate on immigration issues related to victims of violent crime and human trafficking.

Ms. Ramirez was a solo practitioner for six years before merging her practice with Monica E. Lukoschek to form U.S. Immigration Law Group, LLP in 2010.

Ms. Ramirez has extensive experience with family based immigration, waivers, removal defense and naturalization and is well-versed in the employment-based immigrant and non-immigrant visa categories. Ms. Ramirez is a frequent speaker on immigration related topics at a variety of bar associations and continuing legal education seminars. Mrs. Ramirez regularly volunteers her time conducting legal rights presentations including having spearheaded the Orange County Bar Association's INFO presentation on immigration.

Ms. Ramirez is frequently called upon by various news organizations due to her expertise in immigration law such as the Orange County Register, Associated Press, and the Washington Post.

Ms. Ramirez is a Board Member and Past President of the Hispanic Bar Association of Orange County and serves on the District Attorney's Hispanic Advisory Commission.

Ms. Ramirez is fluent in Spanish.

EDUCATION J.D., Loyola Law School, Los Angeles, CA B.A., Scripps College, Claremont, CA

MEMBERSHIP State Bar of California American Immigration Lawyers Association Orange County Bar Association OCBA Immigration Law Section Hispanic Bar Association American Bar Association

#### TAMSEN R. REINHEIMER, Attorney at Law

Ms. Reinheimer has helped hundreds of clients with their estate planning and probate needs. Ms. Reinheimer has worked with clients to prepare revocable and irrevocable trusts, powers of attorney, property agreements, and many other planning documents. She also guides clients through the probate of estates and administration of trusts during incapacity and at death.

Ms. Reinheimer received her Juris Doctorate from Whittier Law School in Costa Mesa, California, and her undergraduate degree in Communication from the University of California at Santa Barbara. Ms. Reinheimer is admitted to practice law in all California courts, and the United States District Court, Central Division. She is a member of the Orange County Women Lawyers Association, Orange County Bar Association, Los Angeles County Bar Association, and American Bar Association.

#### NATHAN R. SCOTT, Attorney at Law

Nate Scott is an appellate lawyer. He has handled 175 appeals and writs as a senior attorney for the Court of Appeal. Nate is the Appeals editor of the State Bar's *California Litigation Review* and a past chair of the Orange County Bar Association's Appellate Law section. His appellate practice articles appear regularly in the *Daily Journal, Orange County Lawyer*, and the *Recorder*. He runs the *Southern California Appellate News* blog, <u>www.socal-appellate.blogspot.com</u>. He began his career litigating appeals and high-stakes business cases at Kirkland & Ellis and Cox, Castle & Nicholson. Nate graduated from UCLA, *summa cum laude*, and Harvard Law School.

Nate actively serves the local legal community. He presides over criminal and civil trials as a Los Angeles Superior Court temporary judge. He serves on the OCBA Administration of Justice, Resolutions, and Bridging the Gap committees, and is a team leader for the Ferguson Inn of Court. He works with at-risk youths and high-school students through the Constitutional Rights Foundation, and teaches nonprofit groups at the Public Law Center.

#### JEFFREY C. TATCH, Attorney at Law

I grew up in South Orange County. I graduated from Corona Del Mar High School in 1989. I attended the University of California, San Diego and graduated on the dean's list, with a degree in Speech/Communications. I attended Western State University, College of Law, and graduated with honors. During law school, I gained three years of valuable experience working in the Orange County District Attorney's Office, as a California State Certified Law Clerk. After the bar exam, I began practicing Criminal Defense for Bridgman, Mortkin, & Shapiro, a firm out of Fountain Valley. After spending nearly 2 years, exclusively practicing defense at the West and Central Justice Center for the firm, I opened my own practice, across the street from The West Justice Center. I have been in private practice for over 9 years now. I litigate all levels of criminal cases, including, homicide, gang crimes, DUI, domestic violence, drug crimes, sexual assault, fraud, theft, juvenile defense and many others. Over the years I have conducted 59 jury trials, and gained many not guilty verdicts, and outright dismissals.

#### LEI LEI WANG EKVALL, OCBA Immediate Past President, Attorney at Law

LEI LEI WANG EKVALL received her undergraduate degree in information and computer science in 1988 from the University of California, Irvine and her law degree in 1992 from the University of Southern California. She served a judicial clerkship to the Honorable Alan M. Ahart, William J. Lasarow, Kathleen T. Lax, Kathleen P. March, and Vincent P. Zurzolo, United States Bankruptcy Judges, from October 1992 to September 1993. From September 1993 to September 1994, she served a judicial clerkship to the Honorable Kathleen P. March, United States Bankruptcy Judge. Ms. Wang Ekvall was an associate with Buchalter, Nemer, Fields & Younger before joining Weiland, Golden, Smiley, Wang Ekvall & Strok LLP when it was formed in August 1995.

Ms. Wang Ekvall is the Immediate Past President of the Orange County Bar Association and President of the Orange County Bar Association Charitable Fund, and she has also chaired various committees and sections of the Orange County Bar Association, including the pro bono committee, the resolutions committee, and the commercial law and bankruptcy section. She is a past president and director of the Orange County Bankruptcy Forum and the Orange County Asian American Bar Association, and has served as a co-chair and member of the Central District of California Lawyer Representatives to the Ninth Circuit Judicial Conference. Among other recognitions, in 2008-2010, she was named a Super Lawyer, representing the top 5% of practicing attorneys in Southern California. Ms. Wang Ekvall is a frequent speaker on the topic of bankruptcy law and co-authored Bankruptcy for Businesses, published in April, 2007 by Entrepreneur Media, Inc., and distributed by McGraw-Hill.

Ms. Wang Ekvall concentrates her practice on bankruptcy-related matters including business reorganizations, creditors rights, and trustee representation.

#### Recognition

- SuperLawyers 2010
- AV Rated Martindale-Hubbell Peer Review Rating



#### **Practice Areas**

• Bankruptcy and Insolvency Matters

#### Education

- University of California, Irvine (Bachelor of Science Information and Computer Science 1988)
- University of Southern California (Juris Doctorate 1992)

#### Admissions

- California State Bar
- United States Court of Appeals for the Ninth Circuit
- United States District Court for the Central District of California
- United States District Court for the Eastern District of California
- United States District Court for the Northern District of California
- United States District Court for the Southern District of California

#### **Memberships & Associations**

- American Bar Association
- Orange County Bankruptcy Forum
- Orange County Bar Association
- Orange County Women Lawyers' Association

#### **Professional Activities**

Immediate Past President, Orange County Bar Association (2011) President, Orange County Bar Association Charitable Fund (2011) President, Orange County Bankruptcy Forum (2004-2005) President, Orange County Asian American Bar Association (2003-2004) Recent Speaking Engagements:

- \* Panelist, *What Do You Do When Employment Law and Bankruptcy Collide*, Orange County Bar Association Commercial Law and Bankruptcy Section (2010)
- \* Panelist, *Issues in Client Confidentiality*, Federal Bar Association 6th Annual Bankruptcy Ethics Symposium (2009)

#### **Publications**

• Bankruptcy for Businesses: The Benefits, Pitfalls and Alternatives-- Entrepreneur Press (Distributed by McGraw-Hill)

#### KAYLEENE H. WRITER, Attorney at Law

Kayleene Writer has been practicing law in Orange County since 1999. She acquired her undergraduate degree from the University of California, Irvine and her Juris Doctorate degree from Thomas Jefferson School of Law in San Diego. Ms. Writer was admitted to the Supreme Court of California in July 1998 and into the U.S. District Court, Central District, in August 1999.

A familiar face in the legal community, Ms. Writer is active in several legal organizations such as the Orange County Bar Association, the OC Barristers and the OC Women Lawyer's Association. She is a regular volunteer with the Public Law Center and a frequent guest lecturer on family law issues at California State University, Long Beach. Ms Writer's practice focuses exclusively on Family Law. Today, her practice flourishes through referrals from satisfied clients and attorneys in Orange County and surrounding areas.

# BRIDGING THE GAP

# STANDARDS FOR PROFESSIONALISM AND CIVILITY AMONG ATTORNEYS

### ORANGE COUNTY BAR ASSOCIATION

#### **Standards for Professionalism & Civility Among Attorneys**

#### PREAMBLE

The legal profession is a noble pursuit that once commanded the respect of all citizens. Recently, the profession's reputation has suffered in the eyes of many. To reverse this trend, and regain the confidence of a weary public, we hereby re-commit ourselves to the goals and ideals we set out to foster when we first determined to become lawyers. We will represent our clients in a manner that not only diligently protects and furthers their interests, but does so in a manner consistent with our dedication to professionalism and civility, thereby enhancing the reputation of the profession and, indeed, the legal system under which we live.

Consistent with this renewed commitment, we adopt the following standards. These standards are not intended to replace or limit our obligations under the Rules of Professional Conduct or any other legal regime. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind. Nonetheless, it is our hope that they are voluntarily embraced by all members of the Bar.

## I. Counsel should communicate with the client in a way that will engender confidence in and respect for the legal profession by:

- A. Regularly keeping the client informed of the ongoing status of a case, including prompt reporting of all important developments, whether positive or negative;
- B. Promptly returning telephone calls, letters, emails, and other communications from the client;
- C. Never fostering or encouraging unwarranted expectations or concerns of the client; and
- D. Striving to achieve a desirable objective for the client as expeditiously and economically as possible.

## II. Counsel should interact with adversaries in a professional and civil manner by:

- A. Acting professionally towards other counsel at all times;
- B. Acting courteously toward opposing counsel's secretaries, clerks, and other office staff, and never taking out frustration with opposing counsel on such individuals;
- C. Honoring commitments, whether oral or in writing;
- D. Not evading an adversary's attempts to communicate (whether by telephone, letter, email, or other means), and responding to such attempts at the earliest reasonable opportunity;

- E. Extending courtesies to opposing counsel, including reasonable requests for extensions of time, whenever possible without prejudicing the client's interests;
- F. Never ascribing a position to opposing counsel for the purpose of creating a false record;
- G. Serving papers on opposing counsel personally or by facsimile, even if allowed by mail, when opposing counsel requests it or when service by mail would prejudice the opposing party; and
- H. Seeking fair resolution of ex parte procedures by not intentionally setting hearings in a way that would prejudice the other side's ability to attend, by providing the adversary more than the bare minimum notice of ex parte hearings, and by serving ex parte papers by facsimile sufficiently in advance of the hearing.

## **III.** Counsel should facilitate the civil and professional exchange of information through written discovery by:

- A. Responding to non-objectionable discovery in a forthright and timely manner;
- B. Never serving discovery for the purpose of harassing or generating expense for an adversary;
- C. Making all efforts to tailor discovery to information or materials actually needed for trial preparation; and
- D. Taking all reasonable and good faith steps to resolve discovery disputes without the need for a discovery motion.

#### **IV.** Counsel should act appropriately in depositions by:

- A. Not engaging in obstructionist, abusive, or rude tactics;
- B. Limiting objections to those that are well founded and necessary to preserve for trial;
- C. Making reasonable efforts to accommodate the schedules of both opposing counsel and the witness when scheduling depositions;
- D. Respecting the priority of a deposition noticed for a date reasonably near in time, unless an earlier deposition is necessary to meet legitimate scheduling concerns; and
- E. Not attempting to delay a deposition unless it is necessary to meet real schedule conflicts, and in such case notifying opposing counsel as soon as possible after learning of the conflict.

## V. Counsel should deal with third parties in a manner consistent with the obligation to act civilly and professionally by:

- A. Treating all third parties with whom one comes in contact in a professional capacity with dignity and respect, including third party witnesses, court reporters, and others; and
- B. Minimizing the time a witness must wait in the courtroom prior to testifying, including an offer to enter into an on-call agreement with each subpoenaed witness.

## VI. Counsel should act appropriately when making written or oral submissions to the Court by:

- A. Never misleading the Court;
- B. Treating the judge and the courtroom staff with courtesy and respect;
- C. Refraining from making disparaging personal remarks about the opposing counsel or party in written submissions or oral argument, unless such person's character is directly and necessarily at issue;
- D. Avoiding ex parte communications with a judge regarding the substance of a case pending before that judge; and
- E. Refraining from casting blame on one's secretary, paralegal, junior lawyer, or other person for any perceived shortcomings or errors in submissions or argument.

#### VII. Counsel should bring professionalism and civility to the courtroom by:

- A. Being punctual and prepared for all court appearances;
- B. Dressing in a manner that is appropriate and respectful when appearing in court; and
- C. Never disrupting another proceeding while waiting to be heard.

#### VIII. Counsel should limit unnecessary motion practice by:

- A. Except in narrow circumstances, discussing with opposing counsel and attempting in good faith to resolve issues in dispute before filing a motion for resolution of such issues; and
- B. Notifying the Court and opposing counsel as soon as possible if the hearing on a motion is no longer necessary.

# IX. Counsel should encourage efficient and appropriate resolution of disputes by:

- A. Exploring and discussing possible settlement and other alternative dispute resolution mechanisms with the client, and being open to such discussions with the adversary; and
- B. Never holding out a false prospect of settlement for the sole purpose of obtaining a delay in discovery or a court proceeding.

# X. Counsel should always foster a positive public perception of the legal community by:

- A. Conducting oneself with dignity at all times, including at depositions and in court;
- B. Never knowingly making untrue statements of fact or law;
- C. Not making derogatory statements about a judge or the judicial process;
- D. Encouraging and engaging in pro bono work; and
- E. Neither participating in nor tolerating racial, ethnic, religious, gender, or sexual orientation bias.

# BRIDGING THE GAP

# MAKING YOUR WAY THROUGH COURT

T. Stanton Mathews, Esq. -- <u>www.injurytriallaw.com</u> Roy L. Comer, Esq. - <u>www.roycomer.com</u>

### BRIDGING THE GAP MAKING YOUR WAY THROUGH COURT

- 1. GOING TO TRIAL MAY, *OR MAY NOT*, BE LIKE WHAT YOU LEARNED IN LAW SCHOOL
- 2. THIS IS STILL A SMALL COMMUNITY, AND YOUR REPUTATION IS IMPORTANT
- 3. WITH A NEW CASE, AS A NEW LAWYER, EARLY SETTLEMENT IS NOT LIKELY
- 4. PLEADINGS
- 5. MEET AND CONFER [RULE 441]
- 6. **DISCOVERY**
- 7. CASE MANAGEMENT CONFERENCE [RULE 445]
- 8. STIPULATION TO ARBITRATION
- 9. REQUEST FOR TRIAL DE NOVO
- 10. PRE-TRIAL PROCEDURE
- **11. SETTLEMENT CONFERENCE/MEDIATION**
- 12. ISSUES CONFERENCE [RULE 450]
- 13. TRIAL DATE

### **ADDITIONAL RESOURCES**

- 1. Ball, David Ball on Damages, The Essential Update (NITA)
- 2. Cotchett, *California Courtroom Evidence* (LexisNexis)
- 3. Danner & Varn, *Pattern Deposition Checklists* (4<sup>th</sup> Ed., Thomson)
- 4. Fine, *The How-To-Win Trial Manual* (4<sup>th</sup> Ed., Juris Publishing)
- 5. Friedman & Malone, *Rules of the Road* (Trial Guides, LLC)
- 6. Goren, *Litigation by the Numbers* (4<sup>th</sup> Ed., Lawdable Press)
- 7. Hermann, *The Curmudgeon's Guide to Practicing Law* (ABA)
- 8. Judicial Council of California, *Civil Approved Civil Instructions* (Thomson)
- 9. Kwong, California Pretrial Practice and Forms (James)
- 10. MacCarthey, MacCarthy on Cross Examination (ABA)
- 11. Matthews & Lancaster, California Causes of Action (James)
- 12. McElhaney, Litigation column, ABA Journal
- 13. Read, Winning at Trial (NITA)
- 14. Sandler & Archibald, *Model Witness Examinations* (2d. Ed., ABA)

## **ENCYLOPEDIC REFERENCES**

- 1. California Practice Guide, Civil Trials and Evidence, (Thomson)
- 2. California Practice Guide, Civil Procedure Before Trial, (Thomson)

### ADDITIONAL SUGGESTIONS

1. Robert Musante adverse and expert deposition seminars, <u>www.killerdepo.com</u>

### "NEVER FAIL" SUPPORT

1. Lunch with other attorneys

Event	Date	Atty Cal	Firm Cal.	Done
Case Name				
Case number				
Our client				
TRIAL DATE:				-
TIME:	Thursday, August 09, 2007			
DEPT:	9:00 a.m.			
PRE TRIAL EVENTS				·
90 Days Before Trial: Last chance to do				
written discovery; Pre-trial and				
Supplementary discovery 75 Days Before Trial: Last day to demand	Friday, May 11, 2007			
exchange of expert without information				
exchange of expert witness information [CCP 2034.220]				
	Saturday, May 26, 2007			
70 Days Before Trial: Last day to demand				
exchange of expert witness information BY MAIL. [CCP 2034.220]	The later of the			
*** 70 Days Before Trial: Last day to serve	Thursday, May 31, 2007			
written discovery by MAIL ***	The			
50 Days Before Trial: Expert witness	Thursday, May 31, 2007			
nformation disclosure [CCP 2034.230(b) 30 Days Before Trial: DISCOVERY CUT-	Wednesday, June 20, 2007			
DFF: All discovery must be completed by				
his date [CCP 2024.020(a)]	-			
25 Days Before Trial: Last Day to serve	Tuesday, July 10, 2007			
Notice to Appear with Production of	1			
Documents in Lieu of Subpoena BY MAIL				
CCP 1987]	Sunday, July 15, 2007			
0 Days Before Trial: Last Day to serve				
lotice to Appear with Production of				
ocuments in Lieu of Subpoena BY HAND				
CCP 1987]	Friday, July 20, 2007			
5 Days Before Trial: Last Day to have				······································
iscovery motions heard before trial [CCP				
024.030]	Wednesday, July 25, 2007	(		
5 Days Before Trial: Last Day to complete				
xpert witness depositions and discovery				
CP 2024.030]	Wednesday, July 25, 2007			
5 Days Before Trial: Last Day to serve				··
otice to Appear Without Documents BY	1			
AIL [CCP 1987]	Wednesday, July 25, 2007			
Days Before Trial: Last Day to have				<u> </u>
pert witness discovery motions heard	1			
CP 2024.030]	Monday, July 30, 2007			
) Days Before Trial: Last Day to serve				
otice to Appear Without Documents BY				
AND [1987]	Monday, July 30, 2007			
Days Before Trial: Issue Conference.	,,,, <u></u> 01			
CSC Rule 450	Monday, July 30, 2007			
Days Before Trial: File Issue Conference				
ocuments	Monday, August 06, 2007			
AY OF TRIAL	Thursday, August 09, 2007		—— <u> </u>	

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Na	me, State Bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO.:	
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNT	IY OF	
MAILING ADDRESS: CITY AND ZIP CODE:		
BRANCH NAME: CASE NAME:		
CASE NAME.		
	•	CASE NUMBER:
CIVIL CASE COVER SHEET	complex case boolginater	
Unlimited Limited	Counter   loinde	)r
(Amount (Amount demanded demand		HIDCE:
exceeds \$25,000) \$25,000		
	s 1–5 below must be completed (see instruction	
1. Check one box below for the case		
Auto Tort	Contract	Provisionally Complex Civil Litigation
Auto (22)	Breach of contract/warranty (06)	(Col. Dulas of Court sulas 2 400 2 402)
Uninsured motorist (46)		Antitrust/Trade regulation (03)
	Collections (09)	
Other PI/PD/WD (Personal Injury/Pro Damage/Wrongful Death) Tort		Construction defect (10)
Asbestos (04)	Other contract (37)	Mass tort (40)
Product liability (24)	Real Property	Securities litigation (28)
	Eminent domain/Inverse condemnation (14)	Environmental/Toxic tort (30)
Medical malpractice (45)		Insurance coverage claims arising from the
Other PI/PD/WD (23)	Wrongful eviction (33)	above listed provisionally complex case types (41)
Non-PI/PD/WD (Other) Tort	Other real property (26)	Enforcement of Judgment
Business tort/unfair business pri		Enforcement of judgment (20)
Civil rights (08)	Commercial (31)	Miscellaneous Civil Complaint
Defamation (13)	Residential (32)	RICO (27)
Fraud (16)	Drugs (38)	
Intellectual property (19)	Judicial Review	Other complaint (not specified above) (42)
Professional negligence (25)	Asset forfeiture (05)	Miscellaneous Civil Petition
Other non-PI/PD/WD tort (35)	Petition re: arbitration award (11)	Partnership and corporate governance (21)
Employment	Writ of mandate (02)	Other petition (not specified above) (43)
Wrongful termination (36)	Other judicial review (39)	
Other employment (15)		
2. This case is is is no	t complex under rule 2.400 of the California	Rules of Court. If the case is complex, mark the
<ol> <li>This case is is no factors requiring exceptional judici</li> </ol>		Rules of Court. If the case is complex, mark the
a. Large number of separat		ber of witnesses
•	· · · · · · · · · · · · · · · · · · ·	on with related actions pending in one or more courts
issues that will be time-co		unties, states, or countries, or in a federal court
c. Substantial amount of do	-	l postjudgment judicial supervision
3. Type of remedies sought (check a		
•	onmonetary; declaratory or injunctive relief	c punitive
4. Number of causes of action (speci		
5. This case is is no	t a class action suit.	
<ol><li>If there are any known related cas</li></ol>	ses, file and serve a notice of related case. (You	u may use form CM-015.)
Date:	k	
		· · · · · · · · · · · · · · · · · · ·
(TYPE OR PRINT NAI		(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
	NOTICE with the first paper filed in the action or proceed orde or Welfare and Institutions Code) (Cal. R	ding (except small claims cases or cases filed cules of Court, rule 3.220.) Failure to file may result
in sanctions.	out, or wentere and manufulions outer. (Odl. R	and or oburt, rule 5.220.71 and e to sile may result
<ul> <li>File this cover sheet in addition to</li> </ul>	any cover sheet required by local court rule.	
• If this case is complex under rule 3	3.400 et seq. of the California Rules of Court, y	ou must serve a copy of this cover sheet on all
other parties to the action or proce		
Unless this is a complex case, this	s cover sheet will be used for statistical purpose	es only. Page 1 of 2
Form Adopted for Mandatory Use	CIVIL CASE COVER SHEET	Cal. Rules of Court, rules 3.220, 3.400-3.403;
Judicial Council of California CM-010 [Rev. January 1, 2007]		American LegalNet, Inc. Standards of Judicial Administration, § 19 www.FormsWorldow.com www.courtinfo.ca.gov

#### INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

#### **To Plaintiffs and Others Filing First Papers**

If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

#### **To Parties in Complex Cases**

Auto Tort

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

#### CASE TYPES AND EXAMPLES

Auto (22)-Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/ Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice-Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of **Emotional Distress** Negligent Infliction of **Emotional Distress** Other PI/PD/WD

#### Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PI/PD/WD Tort (35)

#### Employment

Wrongful Termination (36) Other Employment (15)

Contract Breach of Contract/Warranty (06) **Breach of Rental/Lease** Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/ Warrantv Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case-Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute **Real Property** Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) **Unlawful Detainer** Commercial (31)

#### Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

#### Judicial Review

Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ-Administrative Mandamus Writ-Mandamus on Limited Court Case Matter Writ-Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal-Labor Commissioner Appeals

#### Provisionally Complex Civil Litigation

(Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

#### Enforcement of Judgment

Abstract of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (nondomestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (nonharassment)

Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief from Late Claim Other Civil Petition

ATTORNEY OR PARTY WITHOUT AT	TORNEY (Name & Address):	FOR COURT USE ONLY
Telephone No.: E-Mail Address (Optional): ATTORNEY FOR <i>(Name):</i>	Fax No. (Optional): Bar No:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251 Harbor-Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 Lamoreaux - 341 The City Drive, Orange, CA 92868-3205 North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500 West - 8141 13 <sup>th</sup> Street, Westminster, CA 92683-4593		
PLAINTIFF: DEFENDANT:		CASE NUMBER:
CERTIFICA	TE OF DUE DILIGENCE	Case assigned to: Judge: Department: Date complaint filed: Hearing/trial date:

I certify that I am and was on the dates herein mentioned, over the age of 18 years and not a party to the action. After due and diligent effort. I have been unable to effect personal service on the within-named defendant(s):

due to the following reasons: (If additional space is needed, attach separate page(s) and indicate the number of pages attached.)

Residence Address	Date and Time Service Attempted	Reason for Non-Service
Business Address	Date and Time Service Attempted	Reason for Non-Service
	·	
I declare under penalty of perjury unde Date:	r the laws of the State of California that the fore	egoing is true and correct.
(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)

**CERTIFICATE OF DUE DILIGENCE** 

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE	FOR COURT USE ONLY
JUSTICE CENTER: Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251 Harbor-Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 North - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838-0500 West - 8141 13 <sup>th</sup> Street, Westminster, CA 92683-4593	
PLAINTIFF:	-
DEFENDANT:	
ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION	CASE NUMBER:
Plaintiff(s),	
and defendant(s),	·
agree to the following dispute resolution process:	
Mediation	
<ul> <li>Arbitration (must specify code)</li> <li>Under Section 1141.11 of the Code of Civil Procedure</li> <li>Under Section 1280 of the Code of Civil Procedure</li> </ul>	е
Neutral Case Evaluation	
□ Other (specify):	
Plaintiff(s) and Defendant(s) further agree as follows:	
We understand that there may be a charge for services provided by private arb	itrators and mediators.
Date:	
Date:	ATURE OF PLAINTIFF OR ATTORNEY)
	TURE OF DEFENDANT OR ATTORNEY)

## ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION

Approved for Optional Use L1270 (Rev. January 1, 2007)

ATTORNEY OR PARTY WITHOUT A	TTORNEY (Name & Address):	FOR COURT USE ONLY
Telephone No.: E-Mail Address (Optional): ATTORNEY FOR <i>(Name)</i> :	Fax No. (Optional): Bar No:	
Central Justice Center, 700 Civi	FORNIA, COUNTY OF ORANGE ic Center Dr. West, Santa Ana, CA 92701-4045 anta Ana Blvd., Santa Ana, CA 92701-4512	
PLAINTIFF/PETITIONER:		CASE NUMBER:
DEFENDANT/RESPONDENT:		
	CONFER STATEMENT Unlimited Civil	Case assigned to: Judge: Department: Date complaint filed: Hearing/trial date:
Pursuant to Rule 441 of the Conferred on the following issues	Drange County Superior Court Rules, the	counsel for all parties have met and
. Those facts currently know understood that no sta statement in these proces	n which support the allegations of the pleading tement made at this conference can be edings.	gs filed by each party, it being expressly e used against the party making the

- Possible settlement of this action including possible stipulations for mandatory or binding arbitration.
   \*\* Indicate name(s) of any arbitrator(s) agreed upon:
- 3. The following discovery has been tentatively scheduled.

PARTY	DESCRIPTION	DATE
(attach a separate sheet of p	paper if necessary)	
	d file this document may result in sanctions pursuant to R	ule 454 of the Orange County
ATTORNEY FOR	SIGNATURE (TYPE OR PRINT NAME BELOW)	DATE

\*\*Parties may stipulate to court-ordered arbitration prior to the Evaluation conference. Counsel may secure a list of arbitrators from the Arbitration Office. A stipulation to court-ordered arbitration does not constitute a plaintiff's election to arbitrate pursuant to Civil Code of Procedure, Section 114.12(b) or California Rules of Court, rule 3.810.

TELEPHORE NO:       FAX NO. (Optional):         ATORIESS (Optional):       ATORIESS (Optional):         ATORIEST CONTROL COLIF OF CALIFORNIA, COUNTY OF       STREE MONESSES         SUPERIOR COULET OF CALIFORNIA, COUNTY OF       STREE MONESSES         OTT MO JP CODE:       BONCH MARE         PLAINT/RESPONDENT:       CASE MANAGEMENT STATEMENT         (Check one):       UNLIMITED CASE         (Amount demanded exceede \$25,000)       (Amount demanded is \$25,000         A CASE MANAGEMENT CONFERENCE is scheduled as follows:       Dept.:       Div.:         Date:       Time:       Dept.:       Div.:       Room:         Address of court (if different from the address above):       INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.         Party or parties (answer one):       a       This statement is submitted by party (name):       Div.:       Room:         Address of court (if different is submitted jointly by paries (names):       Complaint and cross-complaint (to be answered by plaintliffs and cross-complainants only)       A       Dim the complaint was field on (date):         Service (to be answered by plaintiffs and cross-complainants only)       A       All parties named in the complaint and cross-complaint have been served, or have been dismise         b       The following parties named in the complaint and cross-complaint (to be answered by not):	ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
E-MIL ADDRESS (Optional):         ATTORNEY FOR VALUED CALIFORNIA, COUNTY OF         STREET ADDRESS         MULIND CONT OF CALIFORNIA, COUNTY OF         STREET ADDRESS:         MULIND CONT OF CALIFORNIA, COUNTY OF         STREET ADDRESS:         MULIND CONT OF CALIFORNIA, COUNTY OF         STREET ADDRESS:         PLAINTFF/PETITIONER:         DEFENDANT/RESPONDENT:         CASE MANAGEMENT STATEMENT         Check one):       UNLINITED CASE         (Amount demanded exceeds \$25,000)       (Amount demanded is \$25,000)         CASE MANAGEMENT CONFERENCE is scheduled as follows:         ate:       Time:       Dept:         Div:       Room:         ddress of court (if different from the address above):         INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.         Party or parties (answer one):         a.       This statement is submitted by party (name):         b.       The complaint was filed on (date):         Service (to be answered by plaintiffs and cross-complainants only)         a.       All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss         b.       The consource of plaint, if any, was filed on (date):         Service (to be answered by plaintiffs		
EMAIL ADDRESS (Optional):		
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Check one):       UNLIMITED CASE (Amount demanded exceeds \$25,000)       LIMITED CASE (Amount demanded is \$25,000)         CASE MANAGEMENT CONFERENCE is scheduled as follows: ale:       Time:       Dept.:       Div.:       Room:         ddress of court (if different from the address above):       .       .       Room:         INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.       Party or parties (answer one):       a.       .       This statement is submitted by party (name):       b.       This statement is submitted jointly by parties (names):         Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)       a.       The cross-complaint, if any, was filed on (date):         Service (to be answered by plaintiffs and cross-complaint and cross-complaint and cross-complaint and cross-complaint or cross-complaint (1)       have not been served (specify names and explain why not):         (2)       have not been served (specify names and explain why not):       (2)       have been served but have not appeared and have not been dismissed (specify names):         (3)       have had a default entered against them (specify names):       (3)       have had a default entered against them (specify names):         c.       The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):		
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ale:       Time:       Dept.:       Div.:       Room:         ddresss of court (if different from the address above):		
ale:       Time:       Dept.:       Div.:       Room:         iddress of court (if different from the address above):	CASE MANAGEMENT CONFERENCE is scheduled as follows:	
All parties named in the complaint and cross-complaint have been served, or have been dismissed (specify names):       Instruction of case         Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)       a. The complaint was filed on (date):         Bervice (to be answered by plaintiffs and cross-complainants only)       a. The cross-complaint, if any, was filed on (date):         Service (to be answered by plaintiffs and cross-complaint have been served, or have appeared, or have been dismise         b.       The following parties named in the complaint or cross-complaint         (1)       have not been served (specify names and explain why not):         (2)       have had a default entered against them (specify names):         c.       The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):		
INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.         Party or parties (answer one):         a.       This statement is submitted by party (name):         b.       This statement is submitted jointly by parties (names):         Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)         a.       The complaint was filed on (date):         b.       The cross-complaint, if any, was filed on (date):         Service (to be answered by plaintiffs and cross-complainants only)         a.       All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss         b.       The following parties named in the complaint or cross-complaint         (1)       have not been served (specify names and explain why not):         (2)       have been served but have not appeared and have not been dismissed (specify names):         (3)       have had a default entered against them (specify names):         (2)       The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):         Description of case		Div.: Room:
Party or parties (answer one):         a.       This statement is submitted by party (name):         b.       This statement is submitted jointly by parties (names):         Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)         a.       The complaint was filed on (date):         b.       The cross-complaint, if any, was filed on (date):         Service (to be answered by plaintiffs and cross-complainants only)         a.       All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss         b.       The following parties named in the complaint or cross-complaint         (1)       have not been served (specify names and explain why not):         (2)       have been served but have not appeared and have not been dismissed (specify names):         (3)       have had a default entered against them (specify names):         c.       The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):	ddress of court (if different from the address above):	
Party or parties (answer one):         a.       This statement is submitted by party (name):         b.       This statement is submitted jointly by parties (names):         Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)         a.       The complaint was filed on (date):         b.       The cross-complaint, if any, was filed on (date):         Service (to be answered by plaintiffs and cross-complainants only)         a.       All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss         b.       The following parties named in the complaint or cross-complaint         (1)       have not been served (specify names and explain why not):         (2)       have been served but have not appeared and have not been dismissed (specify names):         (3)       have had a default entered against them (specify names):         (2)       The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):         Description of case		
<ul> <li>a. The complaint was filed on (<i>date</i>):</li> <li>b. The cross-complaint, if any, was filed on (<i>date</i>):</li> <li>Service (to be answered by plaintiffs and cross-complainants only) <ul> <li>a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss</li> <li>b. The following parties named in the complaint or cross-complaint</li> <li>(1) have not been served (<i>specify names and explain why not</i>):</li> <li>(2) have been served but have not appeared and have not been dismissed (<i>specify names</i>):</li> <li>(3) have had a default entered against them (<i>specify names</i>):</li> </ul> </li> <li>c. The following additional parties may be added (<i>specify names, nature of involvement in case, and the date by whic they may be served</i>):</li> </ul>	a This statement is submitted by party (name).	
<ul> <li>a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismiss</li> <li>b. The following parties named in the complaint or cross-complaint <ul> <li>(1)</li> <li>(1)</li> <li>(2)</li> <li>(2)</li> <li>(3)</li> <li>(3)</li> <li>(3)</li> <li>(4)</li> <li>(4)</li> <li>(5)</li> </ul> </li> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):</li> </ul>	a. The complaint was filed on (date):	s only)
<ul> <li>a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismission.</li> <li>b. The following parties named in the complaint or cross-complaint <ul> <li>(1)</li> <li>(1)</li> <li>(2)</li> <li>(2)</li> <li>(3)</li> <li>(3)</li> <li>(3)</li> <li>(4)</li> <li>(5)</li> </ul> </li> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):</li> </ul>	Service (to be answered by plaintiffs and organ complainants only)	
<ul> <li>b The following parties named in the complaint or cross-complaint (1) have not been served (specify names and explain why not):</li> <li>(2) have been served but have not appeared and have not been dismissed (specify names):</li> <li>(3) have had a default entered against them (specify names):</li> <li>c The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):</li> </ul>		
<ul> <li>(1) have not been served (specify names and explain why not):</li> <li>(2) have been served but have not appeared and have not been dismissed (specify names):</li> <li>(3) have had a default entered against them (specify names):</li> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):</li> </ul>	b. The following parties named in the complaint are cross complaint nave been served, o	or nave appeared, or have been dismissed
<ul> <li>(2) have been served but have not appeared and have not been dismissed (specify names):</li> <li>(3) have had a default entered against them (specify names):</li> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):</li> </ul>		
<ul> <li>(3) have had a default entered against them (specify names):</li> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):</li> </ul> Description of case	(•) Have not been served (specify hames and explain why not):	
<ul> <li>c. The following additional parties may be added (specify names, nature of involvement in case, and the date by whic they may be served):</li> <li>Description of case</li> </ul>	(2) have been served but have not appeared and have not been d	ismissed (specify names):
Description of case	(3) have had a default entered against them (specify names):	
	c. The following additional parties may be added (specify names, nature of invertieve may be served):	olvement in case, and the date by which
		luding causes of action):

	CH 440
PLAINTIFF/PETITIONER:	CM-110
DEFENDANT/RESPONDENT:	
<ul> <li>10. d. The party or parties are willing to participate in (check all that apply): <ul> <li>(1)</li> <li>Mediation</li> <li>(2)</li> <li>Nonbinding judicial arbitration under Code of Civil Procedure section arbitration under Cal. Rules of Court, rule 3.822)</li> <li>(3)</li> <li>Nonbinding judicial arbitration under Code of Civil Procedure section before trial; order required under Cal. Rules of Court, rule 3.822)</li> <li>(4)</li> <li>Binding judicial arbitration</li> <li>(5)</li> <li>Binding private arbitration</li> <li>(6)</li> <li>Neutral case evaluation</li> <li>(7)</li> <li>Other (specify):</li> </ul></li></ul>	
<ul> <li>e. This matter is subject to mandatory judicial arbitration because the amount</li> <li>f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit rec Procedure section 1141.11.</li> </ul>	· · ·
g This case is exempt from judicial arbitration under rule 3.811 of the Californ	nia Rules of Court (specify exemption):
<ul> <li>11. Settlement conference <ul> <li>The party or parties are willing to participate in an early settlement conference (</li> </ul> </li> <li>12. Insurance <ul> <li>a.</li> <li>Insurance carrier, if any, for party filing this statement (name):</li> <li>b. Reservation of rights:</li> <li>Yes</li> <li>No</li> <li>c.</li> <li>Coverage issues will significantly affect resolution of this case (explain):</li> </ul> </li> </ul>	(specify when):
<ul> <li>13. Jurisdiction</li> <li>Indicate any matters that may affect the court's jurisdiction or processing of this case,</li> <li>Bankruptcy</li> <li>Other (specify):</li> <li>Status:</li> </ul>	and describe the status.
<ul> <li>14. Related cases, consolidation, and coordination <ul> <li>a.</li> <li>There are companion, underlying, or related cases.</li> <li>(1) Name of case:</li> <li>(2) Name of court:</li> <li>(3) Case number:</li> <li>(4) Status:</li> <li>Additional cases are described in Attachment 14a.</li> <li>b.</li> <li>A motion to</li> <li>Consolidate</li> <li>Coordinate</li> <li>will be filed by</li> </ul></li></ul>	(name party):
<ul> <li>15. Bifurcation</li> <li>The party or parties intend to file a motion for an order bifurcating, severing, or c action (specify moving party, type of motion, and reasons):</li> </ul>	
16. Other motions	

The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

	CM-110
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

#### 17. Discovery

- a. \_\_\_\_ The party or parties have completed all discovery.
- b. The following discovery will be completed by the date specified (describe all anticipated discovery):

	Party	Description	<u>Date</u>	
C.	2. The following discovery issues are anticipated (specify):			

#### 18. Economic Litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

#### 19. Other issues

The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

#### 20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

#### 21. Case management orders

Previous case management orders in this case are (check one):	none 🗌	attached as Attachment 21.
---	--------	----------------------------

22. Total number of pages attached (if any):

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required. Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY)
	Additional signatures are attached

	CM-110
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

#### 5. Jury or nonjury trial

The party or parties request	a jury trial	a nonjury trial	(if more than one party, provide the name of each party
requesting a jury trial):			

#### 6. Trial date

b.

- a. \_\_\_\_ The trial has been set for (date):
  - No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (*if not, explain*):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

#### 7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. \_\_\_\_ days (specify number):
- b. hours (short causes) (specify):

#### 8. Trial representation (to be answered for each party)

- The party or parties will be represented at trial by the attorney or party listed in the caption by the following: a. Attorney:
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:
- Additional representation is described in Attachment 8.

#### 9. Preference

This case is entitled to preference (specify code section):

#### 10. Alternative Dispute Resolution (ADR)

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. The case has gone to an ADR process (indicate status):

ATTORNEY OR PARTY WITHOUT ATTORN	IEY (Name & Address):	FOR COURT USE ONLY
Telephone No.: E-Mail Address (Optional): ATTORNEY FOR <i>(Name)</i> :	Fax No. (Optional): Bar No:	
	anta Ana, CA 92701-4045 Ana Blvd., Santa Ana, CA 92701-4512 Ioulton Pkwy., Laguna Hills, CA 92653-1251 Jamboree Rd., Newport Beach, CA 92660-2595 Ige, CA 92868-3205 Box 5000, Fullerton, CA 92838-0500	
PLAINTIFF:		CASE NUMBER:
DEFENDANT:		
MEMORANDUM FOR	R SETTING FOR HEARING	Case assigned to: Judge: Department: Date complaint filed: Hearing/trial date:
The clerk is requested to set/reset the a Nature of Proceeding: Adoption Minor's Compromise	above-entitled proceeding for hearing.    Dissolution  Legal Separa  Bifurcated Hearing  Nullity  ding is ready for hearing; and I know of no	□ Other:
heard as soon as the Court's calendar Estimated time for hearing:		
Hearing date(s) preferred: Date:		
(TYPE OR PRINT NAME)	(SI	GNATURE OF APPLICANT OR ATTORNEY)
The above case has been set on the caler □ Central □ Harbor-Laguna Hills Facility Attorney/Attorney's Agent/Party notified or	/ □ Harbor-Newport Beach Facility□ Lamoreaux	at A.M. /P.M. at the North D West Justice Center. ALAN SLATER, Clerk of the Court By: Deputy Clerk
	NOTICE TO ATTORNEYS	
Rule 310 of Orange County Superior Court Rule Rule 310 Default Judgment - Papers required to	es is quoted for your information and compliance:	
"All proposed default judgments or decrees shall in court and prior to the presentation of any evide Civil (\$25,000 and under), check with the clea	be presented to the clerk in the department where the mence. <u>Non-compliance with this rule will result in the main rk's office at the proper court for procedure.</u> ***SUBMIT IN DUPLICATE***	natter is to be heard, at the time of appearance ter being ordered off calendar." For Limited
Approved for Optional Use MEN L124 (Rev. July 1, 2006)	ORANDUM FOR SETTING FOR H	EARING ST101

#### ADR-102

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):			
		FOR COURT USE ONLY	
· · ·			
TELEPHONE NO.:	FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
PLAINTIFF/PETITIONER:			
	-		
DEFENDANT/RESPONDENT:			
		CASE NUMBER:	
REQUEST FOR TRIAL DE NOVO AFTER	JUDICIAL ARBITRATION		
NOTE: If you do not want the arbitrator's award to h		A 61.	

If you do not want the arbitrator's award to become the judgment in the case, you must file a request for a trial de novo within 30 days after the arbitration award is filed with the clerk. If you do not request a trial de novo by this deadline, the arbitrator's award will be final and it will be entered as the judgment in the case. The 30-day period cannot be extended (California Rules of Court, rule 3.826).

Copies of the request for a trial de novo must be served on all parties and the request and a proof of service must be filed with the clerk.

	Plaintiff		Defendant	Other	(specify):
have a second	I ICHINUT	<u></u>	Delendant	Ouioi	ISDECHYJ.

(name):

requests trial de novo in this action, under Code of Civil Procedure, section 1141.20 and rule 3.826 of the California Rules of Court.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 2

www.courtinfo.ca.gov

Code of Civil Procedure, § 1141.20; Cal. Rules of Court, Rule 3.826

	ADR-10
SHORT TITLE:	CASE NUMBER:
Mail Personal S	Service
. At the time of service I was at least 18 years of age and not a party to this le	egal action.
. My residence or business address is (specify):	
I mailed or personally delivered a copy of the Request for Trial De Novo After	Judicial Arbitration as follows (complete either a or b).
<ul> <li>a. Mail. I am a resident of or employed in the county where the mailing         <ul> <li>(1) I enclosed a copy in an envelope and</li> <li>(a) deposited the sealed envelope with the United States</li> <li>(b) placed the envelope for collection and mailing on the our ordinary business practices. I am readily familiar w processing correspondence for mailing. On the same of mailing, it is deposited in the ordinary course of busine envelope with postage fully prepaid.</li> </ul> </li> </ul>	s Postal Service, with the postage fully prepaid. date and at the place shown in items below, following vith this business's practice for collecting and day that correspondence is placed for collection and
(2) The envelope was addressed and mailed as follows:	
(a) Name of person served:	
(b) Address on envelope:	· · · · · · · · · · · · · · · · · · ·
(c) Date of mailing:	
(d) Place of mailing (city and state):	
b. Personal delivery. I personally delivered a copy as follows:	
b Personal delivery. I personally delivered a copy as follows:	
(1) Name of person served:	
• • •	
(1) Name of person served:	

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

ATTC		
	DRNEY OR PARTY WITHOUT ATTORNEY (Name & Address):	FOR COURT USE ONLY
E-Mai	ohone No.: Fax No. (Optional): il Address (Optional): DRNEY FOR <i>(Name):</i> Bar No:	CONFIDENTIAL
Ce	ERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE entral Justice Center, 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 vil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512	NOT TO BE FILE STAMPED
	NTIFF / PETITIONER:	CASE NUMBER:
DEFI	ENDANT / RESPONDENT:	
	SETTLEMENT CONFERENCE STATEMENT UNLIMITED CIVIL	Case assigned to: Judge: Department: Date complaint filed: Hearing date:
1.	Describe the nature of the case:	
2		
۷.	Describe any equitable relief being sought:	
ţ	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judgment regard M	lless of amount: %
, a. <sup>;</sup>	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judg	lless of amount:% ment regardless of amount:
a. b. 3. lfth	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to yo	lless of amount:% ment regardless of amount: ur evaluation.
a. b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to yo Minimum \$ Maximum \$ ne case involves a defense(s) of comparative negligence, your ass he parties: Plaintiff	lless of amount:% ment regardless of amount: ur evaluation.
a. b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to yo Minimum \$ Maximum \$ ne case involves a defense(s) of comparative negligence, your ass he parties: Plaintiff O Defendant	lless of amount:% nent regardless of amount: ur evaluation. essment of negligence attributable
a. b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to yo Minimum \$ Maximum \$ ne case involves a defense(s) of comparative negligence, your ass he parties: Plaintiff Defendant	Iless of amount:% ment regardless of amount: ur evaluation. essment of negligence attributable %
a. b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to your Minimum \$ Maximum \$ ne case involves a defense(s) of comparative negligence, your asson he parties: Plaintiff Defendant Defendant	Iless of amount:% ment regardless of amount: ur evaluation. essment of negligence attributable %
a. b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to your Minimum \$ Maximum \$ me case involves a defense(s) of comparative negligence, your assonable he parties: Plaintiff Defendant Defendant Cross-Complainant	Iless of amount:% ment regardless of amount: ur evaluation. essment of negligence attributable % %
b. 3. If th to t	The probability of plaintiff receiving a favorable judgment regard The probability of cross-complainant receiving a favorable judge % The minimum and maximum potential judgment according to your Minimum \$ Maximum \$ me case involves a defense(s) of comparative negligence, your assonable he parties: Plaintiff Defendant Defendant Cross-Complainant	Alless of amount:% ment regardless of amount: ur evaluation. essment of negligence attributable % % %

- a. Describe the conduct of plaintiff/cross-complainant that will bar or diminish any recovery:
- b. Describe the factual basis of any legal defenses that will bar of diminish any recovery by plaintiff/cross-complaint. 4. If this is a personal injury or wrongful death action, each plaintiff/cross-complainant shall complete the following: a. Nature and extent of injuries: b. Permanent injuries being claimed: c. Nature of any surgical procedures recommended or scheduled: d. Total medical expenses to date: \_\_\_\_\_ e. Future medical expenses: \_\_\_\_\_ Loss of earnings to date: \_\_\_\_\_ f. Future loss of earnings: \_\_\_\_\_ g. Other special damages: \_\_\_\_\_ h. İ. General damages: Punitive damages: \_\_\_\_\_ İ.

- 5. If this is not a personal injury case, each plaintiff shall state the following with respect to each alleged item of damage:
  - a. Identify each item of damage supported by documentary evidence (type and amount):
  - b. Identify each item of damage not supported by documentary evidence (type and amount):
- 6. If you are a plaintiff/cross-complainant in this action, state your demand in order to settle this matter:
- 7. If you are a defendant/cross-defendant in this action, state the terms of your demand in order to settle this matter:
- 8. Describe the status of any previous settlement negotiations:

Date: \_\_\_\_\_

(SIGNATURE OF ATTORNEY)

Attorney for: \_\_\_\_\_

SUBMIT THIS DOCUMENT NO LATER THAN FIVE (5) CALENDAR DAYS PRIOR TO THE MSC HEARING.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name & Address):		FOR COURT USE ONLY
Telephone No.: Fax No. (Optional): E-Mail Address (Optional): ATTORNEY FOR <i>(Name):</i> Bar No:		
Central Justice Center, 700 C	<b>_IFORNIA, COUNTY OF ORANGE</b> Divic Center Dr. West, Santa Ana, CA 92701-4045 . Santa Ana Blvd., Santa Ana, CA 92701-45-12	
PLAINTIFF/PETITIONER:		CASE NUMBER:
DEFENDANT/RESPONDEN	T:	
	JENT OF COMPLIANCE Unlimited Civil	Case assigned to: Judge: Department: Date complaint filed: Hearing/trial date:

This Statement of Compliance shall be executed by all counsel and filed with the court clerk in the department of the judge to whom the case has been assigned for trial, or, if not so assigned, with the clerk in Department One.

- 1. Counsel have inspected all exhibits and diagrams and the exhibits are ready for premarking by the clerk. All stipulations as to admission into evidence or waiver of foundation are submitted with the exhibits(s).
- 2. Pretrial motions have been exchanged by all parties.
- 3. If trial is by jury, proposed jury instructions, proposed special findings and/or general verdict and/or special verdicts will be exchanged before the commencement of trial.
- 4. Joint Statement of the case and joint witness list have been prepared for submission to the court as required.\*\*
- 5. Counsel have prepared a joint list of controverted issues.\*\*
- 6. All counsel have prepared a list of stipulated facts and made a good faith effort to stipulate to as many documents, waiver of foundational requirements, etc., as reasonably possible.\*\*
- 7. Each party agrees that once the trial commences, witnesses shall be available to utilize to the fullest extent possible every trial day.
- 8. Parties have agreed on a division of jury fees (if applicable) and reporter fees, which are due each day before trial commences.

	Attorney for Plf/Def/X-Compl/X-Def		
(DESIGNATE PARTY)		( NAME OF PARTY)	(DATE)
	, Attorney for Plf/Def/X-Compl/X-Def		
(DESIGNATE PARTY)		(NAME OF PARTY)	(DATE)
	, Attorney for Plf/Def/X-Compl/X-Def		
(DESIGNATE PARTY)		(NAME OF PARTY)	(DATE)
	Attorney for Plf/Def/X-Compl/X-Def		
(DESIGNATE PARTY)	·	(NAME OF PARTY)	(DATE)

\*\*Please attach to this Statement of Compliance: Joint Statement of Case, Joint Witness List, Stipulated Facts, Requested Voir Dire Questions and List of Controverted Issues.

## BRIDGING THE GAP

# LAW & MOTION

#### LAW AND MOTION PRACTICE

OCBA Bridging the Gap February 5, 2011

#### **SPEAKERS**:

- Hon. Elaine Streger Judge, Orange County Superior Court
- Janet Christoffersen Research Attorney, Orange County Superior Court
- Nathan R. Scott Senior Attorney, Court of Appeal

#### **SYLLABUS**:

- I. INTRODUCTION, Nate Scott
  - A. Overview and Panelists
  - B. What Is a Motion?
- II. MOTIONS AND THE COURT, Janet Christoffersen
  - A. Court Overview
  - B. Working with the Court
  - C. Drafting and Filing Motions
- III. WINNING MOTIONS, Judge Streger
  - A. Ethical and Effective Motion Practice
  - B. Brief-Writing Tips
  - C. Oral Argument Advice

#### **ONLINE**:

www.ocbar.org.40-page Motion Practice Guidewww.occourts.org.Trial Court Information

1 2 3	DEWEY, CHEATHAM & HOWE LLP IMA PARTNER (STATE BAR NO. 100000) HUMBLE ASSOCIATE (STATE BAR NO. 1234 Main Street Anytown, California 90000	) 200000)	
4	Telephone: (949) 321-1000 Facsimile: (949) 321-1001		
5	Email: ipartner@dch.com Email: hassociate@dch.com		
6	Attorneys for Defendant		
7	ANOTHER CORP.		
8	SUPERIOR C	OURT OF CA	LIFORNIA
9	COUNTY OF ORANG	E, CENTRAL	JUSTICE CENTER
10			
11	ONE CORPORATION, a California	Case No. 070	CC10000
12	corporation, Plaintiff,		all purposes to Likai Seaum, Dept. C100
13			T ANOTHER CORPORATION'S
14	v. ANOTHER CORPORATION, a California	NOTICE OF	MOTION AND MOTION TO ESPONSES AND PRODUCTION OF
15	corporation,	DOCUMENT CORPORAT	<b>FROM PLAINTIFF ONE</b> TON AND FOR SANCTIONS;
16 17	Defendants.	AUTHORIT	DUM OF POINTS AND IES IN SUPPORT THEREOF; ION OF HUMBLE ASSOCIATE IN
18		SUPPORT T	HEREOF
19		Date: Time:	April 1, 2009 9:30 a.m.
20		Place:	Dept. C100
21		Action filed: Trial date:	January 13, 2008 September 29, 2009
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#### **NOTICE OF MOTION AND MOTION**

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3	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:
4	PLEASE TAKE NOTICE that, on April 1, 2009, at 9:30 a.m., or as soon thereafter as
5	the matter can be heard, in Department C100 of the above-referenced Court, located at 700 Civic
6	Center Drive West, Santa Ana, California 92701, Defendant Another Corporation (Another Corp.)
7	will, and hereby does, bring this Motion to Compel Responses and Production of Documents from
8	Plaintiff One Corporation (One Corp.).
9	The Motion will seek, and hereby does seek, an order compelling One Corp. to (1)
10	serve responses without objections to the "Request for Production of Documents (Set One)
11	Propounded by Defendant Another Corporation to Plaintiff One Corporation" (the Requests), (2)
12	produce all responsive documents, and (3) pay sanctions of \$490 to Another Corp.
13	This Motion is made pursuant to California Code of Civil Procedure section 2031.300
14	on the ground One Corp. has failed to serve a timely response to the Requests. It is based upon this
15	Notice of Motion and Motion, the Memorandum of Points and Authorities attached hereto, the
16	Declaration of Humble Associate and accompanying exhibits attached hereto, the pleadings, papers,
17	and other documents on file herein, and such further evidence or argument as the Court may properly
18	consider at or before the hearing on this Motion. This Motion does not require a separate statement
19	because "no response has been provided to the request for discovery." (Cal. Rules of Court, rule
20	3.1020(b).)
21	Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP
22	
23	By:
24	Humble Associate
25	Attorneys for Defendant ANOTHER CORP.
26	
27	
28	
LAW OFFICES OF DEWEY, CHEATEM & 8	57551\320994v1 1
HOWE	DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

3	Months ago, Defendant Another Corporation (Another Corp.) served document
4	requests on Plaintiff One Corporation (One Corp.). Another Corp. gave One Corp. two extensions to
5	respond. One Corp. has served no response. None. Another Corp. respectfully seeks an order
6	compelling One Corp. to (1) serve responses to its document requests forthwith and without
7	objections, (2) produce all responsive documents, and (3) pay sanctions.
8	
9	FACTS
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11	One Corp. alleges Another Corp. breached the 2007 Agreement by providing subpar
12	webhosting services. Another Corp. contends it met the contractual terms and industry standards.
13	To prepare its defense, Another Corp. served its "Request for Production of Documents
14	(Set One) Propounded by Defendant Another Corporation to Plaintiff One Corporation" (the
15	Requests) on November 1, 2008. (Declaration of Humble Associate (Associate Decl.), ¶ 2 & Ex. A.)
16	The ten individual requests addressed material facts underlying One Corp.'s claims and Another
17	Corp.'s defenses. (Ibid.) One Corp.'s response was initially due on December 1, 2008. (Ibid.)
18	At One Corp's requests, Another Corp. twice agreed to extend One Corp.'s deadline to
19	respond to the Requests. (Associate Decl., $\P$ 3.) As a result, the deadline to respond to the Requests
20	became February 5, 2009. (See <i>id.</i> & Ex. B.) But One Corp. failed to serve any response at all. ( <i>Id.</i> ,
21	¶ 4.) Another Corp.'s counsel sent an email to One Corp.'s counsel on February 12, 2009, asking One
22	Corp. to serve responses forthwith and without objections. (Id., $\P$ 5 & Ex. C.)
23	
24	ANALYSIS
25	
26	Discovery "expedite[s] and facilitate[s] both preparation and trial." (Greyhound Corp.
27	v. Superior Court (1961) 56 Cal.2d 355, 376.) "One of the principal purposes of discovery [is] to do
28	away 'with the sporting theory of litigation namely, surprise at trial."" (Ibid.)
LAW OFFICES OF DEWEY, CHEATEM & 8 HOWE	5 57551\320994v1 2 DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS

1	To avoid trial by ambush, the requesting party may move for an order compelling			
2	responses when a party fails to timely respond to requests for production of documents. (Cal. Code			
3	Civ. Proc., § 2031.300, subd. (b).) Moreover, "[t]he party to whom the inspection demand is directed			
4	waives any objection to the demand, including one based on privilege or on the protection for work			
5	product" (Cal. Code Civ. Proc., § 2031.300, subd. (a).) The requesting party need <i>not</i> try to			
6	resolve the matter informally before bringing a motion to compel when the responding party offers no			
7	response at all. (See Cal. Code Civ. Proc., § 2031.310, subd. (b)(2); see also Weil & Brown, Cal.			
8	Practice Guide: Civ. Proc. Before Trial, § 8:1486.) And the Court "shall" impose monetary sanctions			
9	against the losing party on a motion to compel unless the party acted "with substantial justification" or			
10	sanctions are "unjust." (Cal. Code Civ. Proc., § 2031.300, subd. (c).)			
11	One Corp. has failed to respond to the Requests at all. (Associate Decl., $\P 4$ .) It has no			
12	justification for its stonewalling. For Another Corp. to prepare fully for a fair trial, One Corp. must			
13	respond to the Requests without objections and produce all responsive documents. (See Cal. Code			
14	Civ. Proc. §, 2031.300, subds. (a), (b).) And One Corp. should pay sanctions of \$490 to compensate			
15	Another Corp. for its attorney fees and costs in connection with this motion. (Associate Decl., $\P$ 6.)			
16				
17	CONCLUSION			
18				
19	For all these reasons, Another Corp. respectfully requests the Court grant this Motion			
20	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests,			
21	(2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490.			
22	Dated: February 20, 2009DEWEY, CHEATEM & HOWE LLP			
23				
24	By:			
25	Humble Associate			
26	Attorneys for Defendant ANOTHER CORP.			
27				
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LAW OFFICES OF DEWEY, CHEATEM & 8 HOWE	<sup>26</sup> 57551\320996v1 3 DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS			

#### **DECLARATION OF HUMBLE ASSOCIATE**

I, Humble Associate, declare and state as follows:

I am an Associate in the law firm of Dewey, Cheatem & Howe LLP, counsel of
 record for Defendant Another Corporation (Another Corp.) in the above-captioned action. I am duly
 admitted to practice before all courts of the State of California. I am one of the attorneys responsible
 for representing Another Corp. in this action. I am familiar with the files and pleadings in this action
 and have personal knowledge of the facts stated herein. If called upon to do so, I could and would
 competently testify to the contents of this Declaration.

9 2. On November 1, 2008, Another Corp. served on Plaintiff One Corporation (One
Corp.) its "Request for Production of Documents (Set One) Propounded by Defendant Another
Corporation to Plaintiff One Corporation" (the Requests). The Requests contained ten individual
document requests, each concerning material allegations underlying One Corp.'s claims and Another
Corp.'s defenses. Based upon the service date, One Corp.'s response to the Requests was initially due
on December 1, 2008. A true and correct copy of the Requests is attached hereto as Exhibit "A."

At One Corp.'s request, Another Corp. twice agreed to extend the deadline for
 the City to respond to the Requests. As a result, the deadline for One Corp. to respond to the Requests
 became February 5, 2009. A true and correct copy of a December 29, 2008 email from One Corp.'s
 counsel confirming the February 5, 2009 deadline is attached hereto as Exhibit "B."

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4. To date, One Corp. has failed to serve any response to the Requests.

5. On February 12, 2009, I sent an email to One Corp.'s counsel demanding that
One Corp. serve responses to the Requests forthwith and without objections. A true and correct copy
of that email is attached hereto as Exhibit "C."

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28 W OFFICES OF 6. I am a seven-plus-year licensed California attorney, specializing in business and real estate litigation. I have devoted more than one-half hour to drafting and conducting research for the Motion and accompanying materials. I anticipate spending another one hour reviewing and analyzing any opposition to the Motion, drafting a reply in support of the Motion, and preparing for and attending the hearing on the Motion. My normal billing rate for Another Corp. is \$300 per hour. Accordingly, the attorneys' fees incurred by Another Corp. in connection with the Motion will be in

1	excess of \$450 (one and one-half hours at \$300 per hour). In addition, Another Corp. will incur \$40 in
2	costs for filing fees in connection with this Motion. Total attorney fees and costs equal \$490.
3	I declare under penalty of perjury under the laws of the State of California that the
4	foregoing is true and correct, and that this Declaration was made this day of, 2008,
5	in Anytown, California.
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9	Humble Associate
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LAW OFFICES OF	
DEWEY, CHEATEM & 8 HOWE	8 2 DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS

1	DEWEY, CHEATHAM & HOWE LLP IMA PARTNER (STATE BAR NO. 100000)				
2	HUMBLE ASSOCIATE (STATE BAR NO. 1234 Main Street	200000)			
3	Anytown, California 90000 Telephone: (949) 321-1000				
4	Facsimile: (949) 321-1001 Email: ipartner@dch.com				
5	Email: hassociate@dch.com				
6	Attorneys for Defendant ANOTHER CORP.				
7	ANOTHER CORF.				
8	SUPERIOR C	OURT OF CA	LIFORNIA		
9	COUNTY OF ORANG	E, CENTRAL	JUSTICE CENTER		
10					
11	ONE CORPORATION, a California corporation,	Case No. 070	CC10000		
12			all purposes to		
13	Plaintiff,		Likai Seaum, Dept. C100		
14	V.	DEFENDAN	0] ORDER GRANTING T ANOTHER CORPORATION'S		
15	ANOTHER CORPORATION, a California corporation,	COMPEL R	MOTION AND MOTION TO ESPONSES AND PRODUCTION OF		
16	Defendants.		<b>IS FROM PLAINTIFF ONE YON AND FOR SANCTIONS</b>		
17		Date: Time:	April 1, 2009 9:30 a.m.		
18		Place:	Dept. C100		
19		Action filed:	January 13, 2008		
20		Trial date:	September 29, 2009		
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LAW OFFICES OF <b>DEWEY</b> ,	57551\321000v1				
CHEATEM & 8 HOWE		ED] ORDER GRA	ANTING EL RESPONSES AND DOCUMENTS		

1	Defendant Another Corporation's (Another Corp.) Motion to Compel Responses and			
2	Production of Documents from Plaintiff One Corporation (One Corp.) and for Sanctions came on			
3	regularly for hearing on April 1, 2009, at 9:30 a.m., in Department C100 of the above-referenced			
4	Court. The parties appeared as stated on the record.			
5	The Court, having read and considered the papers in support of and in opposition to the			
6	Motion and the pleadings and other papers on file herein, and having heard and considered the			
7	arguments of counsel, and good cause appearing therefor, hereby ORDERS as follows:			
8	The Motion is GRANTED.			
9	1. One Corp. is hereby ORDERED to serve responses without objections to the			
10	Request for Production of Documents (Set One) Propounded by Defendant Another Corporation to			
11	Plaintiff One Corporation and to produce all responsive documents by, 2009; and			
12	2. One Corp. is hereby ORDERED to pay a monetary sanction to Another Corp. in			
13	the amount of \$ for attorney fees and costs it incurred in connection with this Motion.			
14	IT IS SO ORDERED.			
15				
16	Dated: By:			
17	HONORABLE CALLUM LIKAI SEAUM SUPERIOR COURT JUDGE			
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LAW OFFICES OF DEWEY, CHEATEM & G				
HOWE	DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS			

#### **Court Designation List**

Family, Juvenile, Probate, and Mental Health Cases should be filed at the Lamoreaux Justice Center (LIC).

**Small Claims, Limited Civil, Unlimited Civil, Complex Civil, Criminal, and Traffic Cases** should be filed pursuant to this Court Designation List. Use the city where the action arose or where a defendant resides. If the defendant is a business, use the city where the business is located. If the action concerns real property, use the city where the real property is located.

Criminal and Traffic Cases: Use the city where the offense is alleged to have occurred.

City	Unlimited Civil	Limited Civil	Small Claims	Family Probate Mental Health Juvenile	Traffic	<i>Criminal</i>
Aliso Viejo	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Anaheim	CJC	NJC	NJC		NJC	NJC
Brea	CJC	NJC	NJC	Unless otherwise	NJC	NJC
Buena Park	CJC	NJC	NJC	designated, all	NJC	NJC
Costa Mesa	CJC	HJC/LH	HJC/LH	Family, Probate,	HJC/NB	HJC/NB
Cypress	CJC	VJC	VJC	Mental Health, and	SIM	SIM
Dana Point	CJC	HJC/LH	HJC/LH	Juvenile matters are	HJC/LH	HJC/NB
Fountain Valley	CJC	WJC	MJC	filed at LIC	VJC	VJC
Fullerton	CJC	NJC	NJC		NJC	NJC
Garden Grove	CJC	WJC	MJC		WJC	VJC
Huntington Beach	CJC	WJC	MJC		VJC	VJC
Irvine	CJC	HJC/LH	HJC/LH		HJC/NB	HJC/NB
La Habra	CJC	NJC	NJC		NJC	NJC
La Palma	CIC	NJC	NJC		NJC	NJC
Laguna Beach	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Laguna Hills	CIC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Laguna Niguel	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Laguna Woods	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Lake Forest	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Los Alamitos	CJC	WJC	WJC		WJC	DIM
Mission Viejo	CIC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Newport Beach	CJC	HJC/LH	HJC/LH		HJC/NB	HJC/NB
Orange	CJC	CJC	CJC		CIC	CJC
Placentia	CJC	NJC	NJC		NJC	NJC
Rancho Santa Margarita	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
San Clemente	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
San Juan Capistrano	CJC	HJC/LH	HJC/LH		HJC/LH	HJC/NB
Santa Ana	CJC	CJC	CJC		CJC	CJC
Seal Beach	CJC	WJC	WJC		VJC	SLM
Stanton	CJC	WJC	WJC		WJC	SIM
Tustin	CJC	CJC	CJC		CJC	CJC
Villa Park	CJC	CJC	CJC		CJC	CJC
Westminster	CJC	WJC	WJC		WJC	DLW
Yorba Linda	CJC	NJC	NJC		NJC	NJC

#### Legend:

CJC - Central Justice Center: 700 Civic Center Drive, Santa Ana, CA 92701

HJC-LH - Harbor Justice Center, Laguna Hills: 23141 Moulton Parkway, Laguna Hills, CA 92653-1206

HJC-NB - Harbor Justice Center, Newport Beach: 4601 Jamboree Road, Newport Beach, CA 92660

LJC - Lamoreaux Justice Center: 341 The City Drive, Orange, CA 92870

NJC - North Justice Center: 1275 North Berkeley, Fullerton, CA 92838

WJC - West Justice Center: 8141 13th Street, Westiminster, CA 92683

#### **Central Justice Center**

700 Civic Center Drive West Santa Ana, CA 92701

<u>Community Court</u> 909 N. Main St. Santa Ana, CA 92701

Civil Complex Center 751 West Santa Ana Blvd Santa Ana, CA 92701

Department CJ1 Orange County Men's Jail 550 N Flower St. Santa Ana, CA 92703

Harbor Justice Center Laguna Hills Facility 23141 Moulton Parkway Laguna Hills, CA 92653-1206

Harbor Justice Center <u>Newport Beach Facility</u> 4601 Jamboree Road Newport Beach, CA 92660-2595

Lamoreaux Justice Center 341 The City Drive South Orange, CA 92868-3205

North Justice Center 1275 North Berkeley Avenue Fullerton, CA 92832-1258

West Justice Center 8141 13th Street Westminster, CA 92683-4593



## ORANGE COUNTY SUPERIOR COURT LOCATIONS



### ORANGE COUNTY SUPERIOR COURT WEBSITE

## SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE

#### WWW.OCCOURTS.ORG

- Court Locations
- Judicial Officers
- Local Rules
- Calendar Schedules
- Case Information
- Official Forms
- How to File
- E-Filing
- Tentative Rulings

#### <u>Guidelines for Successfully Navigating Through</u> <u>Civil Law and Motion Waters</u>

#### By Elizabeth Olsen and Janet M. Christoffersen, Legal Research Department Orange County Superior Court

#### What's in a motion?

a. *Notice:* include what relief you are seeking against whom, including sanctions, the type of sanctions and against whom they are sought, as well as the case or statutory authority ("grounds") for the relief sought. If you omit any of the foregoing, your motion may be denied. California Rules of Court, Rules 3.1110, 3.1112.

b. *Memorandum of Points and Authorities:* There are page limits for this portion of the motion. See California Rules of Court, Rule 3.1113(d). Be careful to avoid extensive footnotes in an effort to avoid the page limit. There are specifications as to the size and type of font to be used in court filings. California Rules of Court, Rules 2.104, 2.105. Even if your opponent fails to note aberrations, don't count on the court to ignore these defects.

Make sure you provide analysis of the authority you cite: tell how the law applies to the facts of your case. Don't use string cites.

Be sure to read the cases you cite, because your opponent and the court will. Your opponent, as well as the court, will also likely Shepardize the authority you cite, so check it yourself before including it in your papers.

Wherever possible, rely upon state law; secondary authority (out-of-state or federal) generally is discretionary. Where secondary authority is cited, a copy must be filed with the court. California Rules of Court, Rule 3.1113(j).

Never cite treatises, such as Witkin or The Rutter Group practice guides, as the sole authority for your argument.

If your memorandum reaches a certain page limit, which differs depending on the type of motion involved, you must include a table of authorities and a table of contents. If you anticipate that your memorandum will exceed the page limit, you must seek the court's permission via ex parte application before filing such a memorandum. California Rule of Court, Rule 3.1113(e).

As a courtesy to all concerned, prior to filing your motion, double-check the accuracy of your citations, which must include the *official* report volume, page number and year of publication. California Rules of Court, Rule 3.1113(c).

c. *Declaration:* Generally, this portion of the motion is the foundation for the facts which support the relief sought. Declarations generally must be made by persons with personal knowledge of the facts contained therein—you, as counsel for your client, most likely do not have personal knowledge of a contract entered into between your client and his/her adversary.

The declaration must affirmatively state facts which confirm that the declarant has personal knowledge of the information. If the declarant is offering business records as exhibits, include all of the foundational facts to support that the declarant is competent to offer the documents as exhibits.

The declaration must include an attestation that the declarant states under penalty of perjury that the facts are true. The declaration must be signed by the declarant and also include the date and location of its execution. If the declaration is signed outside California, the declaration under penalty of perjury must also add "under the laws of the State of California."

d. *Exhibits:* Exhibits should always be offered through a declaration by a declarant that is competent to offer the exhibits. The exhibits must be tabbed. California Rules of Court, Rule 3.1110(f).

If you have multiple declarations, each referencing different exhibits, number or alphabetize all exhibits consecutively – do not offer four Ex A's or Ex 1's with each of four declarations; it is confusing to the parties, the court and the record. If the exhibits are extensive, they should be offered in a separate document.

e. Judicial notice: Before you request that the court take judicial notice of a document, determine whether it is the type of document of which the court may take judicial notice – i.e., a court order or judgment, not a declaration or memorandum of points and authorities. See Evidence Code §§ 450, *et seq.;* California Rules of Court, Rules 3.1113(m), 3.1306(c).

A request for judicial notice is a separate document, which should include the authority under which judicial notice is sought and copies of all documents for which judicial notice is sought. In some instances, a certified copy of the document must be provided, i.e., a grant deed or order from another court or case.

f. *Proof of service:* Be sure to check on your time limitations and serve your motion in a timely fashion. CCP §§ 1005, 1013, 437c, 425.16(f), etc. Determine whether you need to give additional time to your adversary based on the type of service you intend to implement. The proof of service must be signed by the person that actually served the document. "Caused to be" served is not personal knowledge.

Service by fax is authorized only where the parties agree to such service. CCP § 1013(e)

g. *Filing your motion:* Check California Rules of Court, Rule 2.100 et seq. to determine the required formatting of your motion.

Most, if not all, motions that you file with the court must be accompanied by a filing or motion fee, the amount of which is not uniform. Check the court's website, the local rules, the California Rules of Court, statutes or, failing that, contact the court directly to determine what fees are required before you file the motion.

Some courts also require that you "reserve" a hearing date before filing the motion. Check on the court's website, the local rules, or contact the department directly on this issue before the motion is filed.

#### **Oppositions, Replies and Proposed Orders**

a. Make sure they are timely filed and served. Generally, see CCP §§ 1005, 1013. (Check the applicable law for your specific motion; it may disclose different requirements than the general authority cited here.)

b. Address your adversary's argument and then bring up new argument.

c. Replies: provide only new material that is responsive to the opposition. Don't repeat what's in your moving papers.

d. With some motions, proposed orders are mandatory. Regardless of the foregoing, a proposed order should be submitted by you as the moving or responding party. The proposed order must also be served upon all parties that have entered an appearance in the action. California Rules of Court, Rule 3.1113(n).

#### Types of motions

a. Demurrer [CCP §§ 430.10, et seq.] and motion to strike [CCP §§ 435-437]. Read the appropriate statutes, and California Rules of Court, Rules 3.1112, 3.1113, 3.1320, and 3.1322; there are special rules regarding the timing of filing such documents and notice requirements.

If you're the plaintiff and intend to amend the complaint in advance of the hearing pursuant to CCP § 472, timely notify the department in which it is set, as well as your adversary.

Do not offer evidence in conjunction with these motions. Don't challenge the facts.

See above comments re requests for judicial notice.

b. Anti-SLAPP motions. CCP § 425.16 is a powerful weapon for defendants,

which may secure their dismissal from a case early in the litigation. When you, as defense counsel, are provided the complaint, review it to determine whether any cause of action falls within the ambit of CCP § 425.16.

Be sure to research cases each time you prepare this motion; it is not uncommon for the appellate courts to issue opinions on SLAPP motions on a fairly frequent basis.

Beware that the burden of proof on these motions is not the typical burden of proof in a civil action.

c. *Provisional remedies*: Provisional remedies, i.e., a preliminary injunction, writ of attachment or writ of possession, are frequently sought early in the litigation.

If the defendant has not made a general appearance in the action when you seek such relief, the moving papers must be personally served on the defendant, as well as the summons and complaint. Check the statutes regarding the burden of proof on these motions. Where mandated, use the proper Judicial Council forms.

Be specific as to what you want and why you are entitled to it through declarations by persons with personal knowledge.

d. *Discovery:* Try to work out all discovery disputes before resorting to the court. Be civil and professional with your adversary. Don't present petty arguments to the court—it reflects not only on you for that motion, but for the case in general.

Read the discovery statute that is involved to ensure that you do what is required, not only in attempting to informally resolve the dispute, but also as to what is required in your moving or opposing papers, i.e., evidentiary showing by the moving party for an order for production of documents pursuant to a request to produce documents. CCP § 2031.300.

Check California Rules of Court, Rule 3.1020 to determine whether you must file a Separate Statement in addition to the standard components of a motion.

If you want to have the plaintiff examined for a mental condition, a motion is required unless you can get the plaintiff to stipulate to same.

e. *Continue trial:* Read California Rules of Court, Rule 3.1332. Note that continuances of trial are disfavored. A special fee is assessed on granting a motion for continuance. Gov. Code § 26830(d)

f. Summary judgment/summary adjudication of issues. The time requirements for this motion differ from other motions. See CCP § 437c(a). The wording of your notice and your Separate Statement issues, if any, is particularly critical, as it can serve to defeat your motion if improperly done.

Whether you are the moving or opposing party, you must file a Separate Statement. California Rules of Court, Rule 3.1350.

The court will scrutinize the motion very carefully to ensure that it is procedurally and substantively correct.

If you seek adjudication of a cause of action, an affirmative defense, damages or punitive damages, your Separate Statement must be properly framed, with each item sought to be adjudicated identified and undisputed facts set forth thereunder. See California Rules of Court, Rule 3.1350. Know the difference between a fact and a conclusion.

If voluminous materials are provided, make sure you highlight the portions which are to be considered by the court.

Beware of offering new evidence or authority in Reply. San Diego Watercrafts, Inc. vs. Wells Fargo Bank (2002) 102 Cal.App.4th 308, 316

g. CCP § 473: This is an important statute to know in the event that you miss a deadline. The statute provides for discretionary and mandatory relief from default, default judgment, and dismissal.

Timeliness in filing this motion is critical; act promptly once you determine that such relief is necessary. Declarations are particularly important here.

h. *Post-trial motions:* There are special timelines for filing these motions, which include motion for new trial, motion for judgment notwithstanding the verdict, motion to tax costs, motion for attorney fees. Check the statutes for the applicable grounds for the motion.

i. There are many other types of motions. If you believe court relief is necessary, but don't know if there is authority for it, check a treatise, i.e., Weil & Brown, California Practice Guide: Civil Procedure Before Trial, or Continuing Education of the Bar, Civil Procedure Before Trial, however, do not cite only the treatise in your papers as the authority for your motion. The California Code of Civil Procedure and California Rules of Court are also helpful starting points.

#### Internet rulings:

Before you file a motion directed to a particular department, check the court's website to determine whether the department has information posted as to its law and motion calendar. You may be able to determine the dates and times on which the department hears law and motion matters, as well as securing a tentative ruling in advance of the hearing.

If, after filing your motion, you determine before the hearing that the motion is no longer required, call the department to request that the motion be taken off-calendar. Do not delay in informing the court of the foregoing.

#### Should you file a motion?

Before filing a demurrer or motion to strike, make certain that doing so will truly aid your client. In many instances, the result of filing these pleading motions may be to allow plaintiff to fine-tune his/her case and correct overlooked deficiencies in the complaint, rather than benefit your client.

There are occasions when attacking the pleading may be of benefit, i.e., where there is an incurable defect on the face of the pleading, as where the dates pled in the complaint in conjunction with the cause of action confirm that the cause of action is barred by the statute of limitations; or where the complaint is so poorly worded that, in the event defendant intends to file a summary judgment motion, a motion which is grounded in the pleadings, its content may impede granting of summary judgment.

Summary judgment motions entail a significant investment of time and expense for all concerned. Before filing this type of motion, carefully consider whether it should be filed. If you just want to "flush out" your adversary's evidence and do not have a realistic expectation of success, propound discovery to determine such evidence and forget filing the motion. In certain instances, the filing of the motion may alert your adversary to defects in his/her pleading, which allows them an opportunity to cure the defects before trial and judgment.

If you file a summary judgment motion and then receive opposition which evidences that there is at least one triable issue of material fact, take the motion offcalendar and save everyone, including the court, unnecessary wasted time.

Discovery motions can be costly and time-consuming. Make sure that you really need to file a motion to compel discovery. If the defects in discovery responses are not significant, a motion to compel further responses may not be in your client's best interests. Sometimes deficient discovery responses may inure to the benefit of your client and are better left alone.

As to discovery motions which require a meet-and-confer process before filing the motion, make sure that you have made a reasonable and good faith attempt to resolve all issues before filing the motion.

Before filing other motions, consider whether you can accomplish what needs to be done informally with your adversary; your mutual clients may benefit from this and you can focus your time and efforts the many other litigation issues that arise. *Finally, consider "the big picture":* will filing the contemplated motion ultimately aid in the successful resolution of the case for your client at trial or in settlement? There are times when a party is successful in law and motion, however, evidence or rulings regarding that motion are ultimately used against that party later in the case.

#### **General Observations:**

To properly prepare a motion, you must follow the specific procedures required in statutes and the California Rules of Court and read the cases which you cite. Don't underestimate the opposition.

When preparing your Memorandum of Points and Authorities, try to find the authority which applies to your facts and cite it. Finding a case which is on point and analyzing that case alone is much more effective than offering numerous cases which are only tangentially relevant.

Beware of the time requirements for each motion. They are not the same for all civil motions.

Include a brief statement of the facts in your motion to familiarize the court with the case, even if you have filed prior motions in the action.

Be civil and professional in your papers and at the hearing; remember that you should have your client's best interests at heart – they are generally not served by demeaning your adversary.

## Use and Abuse of MSJs: A View from the Bench

#### by Hon. Michael J. Brenner and Jeremy G. March

"[Code of Civil Procedure] section 437c is unforgiving; a failure to comply with any one of its myriad requirements is likely to be fatal to the offending party....Any arbitrary disregard of the statutory commands in order to bring about a particular outcome raises procedural due process concerns...The success or failure of the motion must be determined ... by application of the required step-by-step evaluation of the moving and opposing papers."

- Zimmerman, Rosenfeld, Gersh & Leeds v. Larson (2005) 131 Cal. App. 4th 1466, 1476-1477.

**R**CENTLY, some of the civil departments in the Orange County Superior Court have seen an increase in unwarranted Motions for Summary Judgment or Motions for Summary Adjudication (collectively, MSJs) that fall far short of the procedural or substantive requirements of the summary judgment statute – Code of Civil Procedure Section 437c – or with the applicable Rules of Court. At a minimum, these motions are expensive and time consuming for the moving party to draft, for the other party to oppose, and for the court to review, and do not benefit the parties who bring them. In more egregious cases, such motions may even lead to sanctions against the moving party or their counsel.

This article is not intended to discourage attorneys from bringing MSJs where they can do so in good faith and otherwise have a basis for doing so. It is, however, intended to point out, in ascending order of seriousness, certain fatal errors and other problems that we have recently encountered and that will prevent a court from granting an MSJ. The article then briefly dis-



cusses sanctions that an attorney - or a party - may face where an MSJ is brought (or opposed) in bad faith.

## MSJs exceeding the 20-page limit for Points and Authorities.

MSJs often involve complicated fact patterns and issues of law. Many counsel try to pack all details and legal arguments supporting (or opposing) the MSJ into the Memorandum of Points and Authorities. However, for best results, the memorandum should be concise and wellorganized. Keep in mind that California Rule of Court 313(d) imposes a 20-page limit on Memoranda of Points and Authorities accompanying or responding to an MSJ. Under CRC 313(e), a memorandum that exceeds 10 pages must include a table of contents and a table of authorities. A memorandum that exceeds 15 pages must also include an opening summary of argument. A memorandum that exceeds the page limits of these rules must be filed and considered in the same manner as a late-filed paper. Unless a party previously obtains leave of court to file a longer memorandum, a memorandum of points and authorities exceeding these page limits will be accepted for filing by the court, but it will be considered in the same manner as a late-filed paper. (CRC 313(e).) This means that the court, in its discretion, may refuse to consider the memorandum if the court so indicates in its minutes or order. (CRC 317(d).) To avoid

these problems, the detail should be contained in the Separate Statement, the supporting declarations, and other supporting documents, and referenced in the Memo of Points and Authorities.

## MSJs (or oppositions) with inadmissible supporting declarations.

Every so often, a party bringing (or opposing) an MSJ will require a declaration from an out-of-state witness. This witness declaration may contain crucial evidence and be of great interest to the court. However, the court will be unable to accept such a declaration if it does not have proper jurats. As is commonly known, CCP Sec. 2015.5(a) requires declarations signed within the State of California to bear the following jurat: "I certify (or declare) under penalty of perjury that the foregoing is true and correct." Occasionally, however, attorneys forget that CCP Sec. 2015.5(b) requires a slightly different jurat for declarations executed outside of the State of California: "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct" (emphasis added). Although this may seem like a technical difference, the courts have made clear that a declaration is defective under section 2015.5 absent an express facial link to California or its periury laws. (Kulshrestha v. First Union Commercial Corp. (2004) 33 Cal. 4th 601, 612.) While a

defective jurat in a supporting declaration will probably not cause a court to deny (or grant) an MSJ, it could well result in delays and extra expense while the court continues the hearing and requires the attorney to obtain a new declaration with a proper jurat.

#### MSJs with defective separate statements.

Under CCP Sec. 437c(b)(1), the papers supporting an MSI must include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The separate statement must also comply with the requirements of California Rule of Court 342. CRC 342(d) requires that the separate statement separately identify each cause of action, claim, issue of duty or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense. In a two-column format, the statement must state in numerical sequence the undisputed material facts in the first column and the evidence that establishes those undisputed facts in the second column. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

Separate statements may be difficult to properly prepare. However, attempts to circumvent the requirements may lead (or force) the court to deny an otherwise meritorious MSJ. CCP Sec. 437c(b)(1) explains that failing to comply with the separate statement requirement in the supporting papers may constitute a sufficient ground, in the court's discretion, for denying an MSJ. Similarly, under CCP Sec. 437c(b)(3), failure to comply with the separate statement requirement for oppositions may constitute grounds, in the court's discretion, for granting an MSJ. As the Zimmerman court explained, "[s]eparate statements in particular 'are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for [summary adjudication] and summary judgment to determine quickly and efficiently whether material facts are disputed."" (131 Cal. App. 4th at 1476 (citing United Community Church v. Garcin (1991) 231 C.A.3d 327, 335).)

Also keep in mind that the Separate Statement is the link between the points and authorities and the "raw" evidence of the case. Unless your Separate Statement is sufficiently detailed (i.e., specific undisputed facts, supported by specific citations to the evidentiary record), the court cannot confirm whether, and if so how, the evidence supports your position.

Thus, a separate statement that contains only broad legal arguments rather than specific undisputed facts (for example, "Defendant exercised due care in inspecting the products before selling them") may sink an MSJ. So may separate statements containing only vague citations to the evidence (for example, references to " $\pi$ 's Deposition Transcript," with no page or line numbers).

#### MSJs (and oppositions) that do not reference specific evidence.

Just as Separate Statements should contain specific citations to the relevant evidence, the Memorandum of Points and Authorities should contain specific references to facts in the Separate Statements. A Memorandum of Points and Authorities that "generically" asserts, without specific citations, that a triable issue of fact does or does not exist is of limited use to the court. One recent MSJ repeatedly stated that the "evidence shows a triable issue of fact" with respect to this or that issue. Such statements require the court to carefully compare the facts in the separate statement with the arguments in the memorandum to ensure that they match. To enable the court to quickly validate your arguments, each topic or subtopic addressed in your Memorandum of Points and Authorities should reference, at a minimum, specific numbered facts in your Separate Statement.

#### "Non-dispositive" MSJs.

A motion for summary adjudication may be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (CCP Sec. 437c(f)(1).) For example, although a trial court has the power to interpret a contractual provision as a matter of law, where such interpretation of contractual duties does not fully dispose of any portion of the action, it is not a proper subject for summary adjudication. (Regan Roofing Co. v. Superior Court (1994), 24 Cal. App. 4th 425, 437.)

#### MSJs that do not specify the issues for which summary adjudication is sought / MSJs that confuse summary judgment with summary adjudication.

Summary judgment is a device for narrowing issues for trial, not a trap for an unwary opponent. If a party desires adjudication of particular issues or subissues, that party must make its intentions clear in the motion. In other words, the court may not summarily adjudicate issues or subissues that are not specifically raised in the Notice of Motion. (Homestead Sav. v. Superior Court (1986) 179 C.A.3d 494, 498.) This is consistent with CCP Sec. 1010's requirement that a Notice of Motion specify the grounds upon which it is made.

A corollary of this rule is that, when a notice of motion says that it seeks only summary judgment, the entire motion must be denied if the opposing party presents a ny triable material issue of fact. Where the notice requests only summary judgment, the court cannot assume that the moving party wants summary adjudication of individual causes of action or issues if summary judgment on the complaint as a whole is denied. (Weil & Brown, CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL, Sec. 10:88.) A safer approach might be to draft a notice that seeks summary judgment or, in the alternative, summary adjudication of specified issues.

## Untimely (or hastily and inadequately prepared) MSJs.

Very strict timelines govern the filing and hearing of MSJs. Section 437c(a) requires that notice of the MSJ and all supporting papers be served on all other parties to the action at least 75 days before the time appointed for hearing (or 80 days if served by mail). The court may not shorten this 75-day notice period without the parties' consent. Section 437c(a) gives the court the power to shorten time on other summary judgment requirements, but not on the 75-day notice of hearing. (Weil & Brown, CALIFORNIA PRACTICE GUIDE : CIVIL PROCEDURE BEFORE TRIAL. The Rutter Group, 2004 Ed., Section 10:80.5 (citing McMahon v. Sup. Crt. (American Equity Insurance Co.) (2003) 106 C.A.4th 112, 116).) Under Section 437c(a), the motion must be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise.

Thus, a party wishing to file an MSJ must

begin preparing it as soon as possible, and should tailor their discovery to build their case for an MSJ. If a party waits too long before filing an MSJ, they will not have proper supporting evidence, or the time to prepare proper arguments. The court may then be confronted with (and confounded by) a very short MSJ whose points and authorities contain only very broad statements of principle; and whose supporting evidence consists largely of declarations containing conclusory statements (often repeating verbatim the broad legal conclusions in the points and authorities). An MSJ such as this is easy to oppose.

## MSJs brought in cases with clear triable issues of fact.

An MSJ will only be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (CCP Sec. 437c(c).) The moving party has the initial burden of making a prima facie showing that there are no triable issues of material fact. If the moving party does so, the burden then shifts to the opposing party to show that a triable issue of fact exists. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.)

An attorney bringing an MSJ should always ask whether, in view of the depositions and other discovery conducted thus far, there is truly a triable issue of fact in the case. If so (for instance, if both sides have amassed opposing evidence on key issues, such as an employer's possible motivation for terminating an employee or whether someone properly performed their contractual obligations), an MSJ will likely be defeated. Remember that all inferences in the evidence must be read in favor of the opposing party and against the moving party. (Hannoka v. Pivko (1994) 22 C.A.4th 1553, 1558.)

## MSJs that attempt to "hide" triable issues of fact.

Naturally, an MSJ should never cite evidence out of context in an effort to conceal a clearly triable issue of fact. Anyone considering doing this should keep in mind that the opposing party need only show the court the rest of the evidence to defeat the motion. In one recent sexual harassment case, a plaintiff accused a supervisor of showing the plaintiff sexually explicit material on the job. The supervisor and the employer moved for summary judgment and supported their motion with extensive excerpts from the plaintiff's deposition at which the plaintiff testified that the supervisor had shown the plaintiff nothing more than some pictures on a website dedicated to a fairly common hobby that by itself has no sexual connotations. The plaintiff, in opposing the motion, attached other pages from the deposition transcript in which the plaintiff testified that the photos in question were themselves sexually graphic. In another case, an employer defending against a wrongful termination case offered declaration testimony that, in the last few years of the plaintiff's employment, the plaintiff's performance had fallen far below acceptable standards. The plaintiff's opposition included the plaintiff's entire personnel file, which included sterling performance

evaluations for those same years.

#### Sanctions for gross abuse.

The summary judgment statute itself contains language allowing the court to sanction a party for filing a frivolous declaration in connection with an MSJ. Specifically, if the court determines at any time that any declarations supporting or opposing an MSJ were presented in bad faith or solely for purposes of delay, the court must then, after a noticed hearing, order the party presenting the declarations to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. (CCP Sec. 437c(j).) Also bear in mind that if the court concludes that any pleading signed by an attorney and filed with the court was made in bad faith, the court may impose sanctions on the attorney, law firm, or party responsible under CCP Sec. 128.7. Courts generally do not want to impose either 437(c)(j) or 128.7 sanctions on a party, and usually with not do so if they believe that the party has merely made a mistake. However, an attorney, whether at the behest of their client or on their own initiative, who crosses the line from zealous advocacy to abuse of process may find themselves the target of such sanctions.



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## LAW AND MOTION PRACTICE: From the Perspective of Superior Court Legal Research Attorneys

William P. Gray Legion Lex Inn of Court May 9, 2007

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### PROGRAM OUTLINE

#### I. <u>Overview of Orange County Superior Court Legal Research</u> <u>Department</u>

A. The "4-5 Teams" for civil law and motion

- 1. Legal Research Attorneys and their experience
- 2. Benefits of team structure
- 3. Temporary Judges

#### B. "Working up motions"

- 1. When motions are received
- 2. How motions are worked up

#### II. Motions in General

#### A. Filing and Service Requirements

- 1. Filing
  - a. Moving Papers -- Unless otherwise ordered or specifically provided by law, all moving and supporting papers must be filed at least 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (a).) Be careful not to count court holidays as court days. (See court's holiday schedule on the court's public website under general information.) For example: For a hearing set on 2/23/07, the last day to timely file the motion will be 1/30/07 because there are 2 court holidays that are not counted as court days.
  - b. Opposition Papers -- Must be filed at least 9 court days prior to the hearing. (Code Civ. Proc., § 1005, subd. (a).) Again, be careful not to count court holidays as court days.
  - c. Reply Papers -- Must be filed at least 5 *court days* prior to the hearing. (Code Civ. Proc., § 1005, subd. (a).) Again, be careful not to count court holidays as court days.

- 2. Service
  - a. Who Must Be Served -- Moving and supporting papers should be served on *all* parties who have appeared in the action, whether or not the motion seeks relief against such parties. (See Code Civ. Proc., § 1014, indicating that "[a]fter appearance, a defendant or the defendant's attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.")
  - b. Personal Service
    - If the moving papers are personally served, the hearing on the motion can be noticed 16 *court* days or more after the papers are served and filed. (Code Civ. Proc., § 1005, subd. (a).)
    - 2) A declaration of personal service is required by the person actually delivering the documents. Thus, for example, if a messenger service is used to serve documents, the proof of service must be signed by the messenger. It is not proper for the proof of service to be signed by someone, such as a secretary, who merely gives the papers to the messenger. Similarly, it is insufficient for the declaration regarding service to indicate that the person signing the proof of service "caused" the documents to be personally delivered. Again, the person who actually served the papers must sign the proof of service.
  - c. Mail
    - 1) When service is made by mail in California to another location within California, an additional 5 calendar days are added to the filing dates noted in the section above under Filing. (Code Civ. Proc., § 1005, subd. (a).) There is some confusion and disagreement over whether the court days for filing are counted forward from the date of service, or backward from the hearing date, before adding the additional calendar days. The difference in calculation can make a difference as to whether the papers are deemed timely served. In the absence of any authority directly addressing this issue with respect to Section 1005, it is has been the procedure of the court's Legal Research Department, which is currently under review, to count the requisite number of court days backward from the hearing date, and then count back the additional calendar days. (For example, the necessary service date for a motion

served by mail with a 7/20/07 hearing date would be calculated as follows: (1) first count back 16 *court* days from the hearing date, excluding court holidays, which would be 6/27/07; (2) then count back 5 *calendar* days, which would render 6/22/07 as the last day to timely serve the papers by mail.)

- 2) Service of opposition and reply papers by mail is generally improper. (See Code Civ. Proc., § 1005, subd. (c), stating that all opposition and reply papers must be served by personal delivery, fax, express mail, or other means reasonably calculated to ensure delivery to the other party no later than the close of the next business day after the papers are filed.)
- d. Fax Service

e.

- When service is made by fax (or express mail or other method of overnight delivery), an additional 2 *calendar* days are added to the filing dates noted in the section above under *Filing*. (Code Civ. Proc., § 1005, subd. (a).) The same method of calculation discussed in the above section under *Mail* applies to fax and overnight delivery.
- Service by fax is permitted *only* where the parties have agreed to this method of service, and a written confirmation of the agreement is made. (Code Civ. Proc., § 1013, subd. (e); Cal. Rules of Court, rule 2.306, subd. (a).) It would be helpful if the parties noted on the proof of service that service by fax is being made pursuant to a confirmed agreement between the parties.
- Filing Proof of Service -- Pursuant to California Rules of Court, rule 3.1300, subdivision (c), proof of service of the moving papers must be filed with the court no later than 5 court days prior to the date set for the hearing. (Note: This is a change from prior Rule 317, which required 5 calendar days.) It is a good idea, if possible, to try to file proof of service along with the moving papers, or immediately thereafter. Failure to file proof of service as required may result in the motion being taken off calendar by the court. (Do not forget to *sign* the proof of service.)

#### B. Motion Content

- 1. Introduction -- Depending on the length of the motion and number of issues raised, consider starting with a *brief* introduction (usually no longer than one page) that provides a brief synopsis of the arguments in the order they are presented in the paper. An introduction should provide a roadmap to the reader to let the reader know the issues being addressed, and the order in which they are being addressed.
- 2. Statement of Facts and Procedural Posture
  - a. Provide a brief, *accurate* statement of facts, including any procedural facts, that are *relevant* to the motion being brought and which will help the court understand what the case and issues are about. Although one may summarize facts in the light most favorable to one's client, do not misstate or exaggerate the facts, as this will destroy one's credibility as to the motion in general. (See Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 9:71.)
  - b. Do not assume the court is familiar with the facts of the case or remembers everything that occurred procedurally before the motion at issue was filed. Although, generally, a case will be assigned to the same legal research attorney each time a new motion is filed, the research attorneys read numerous motions everyday. Provide enough facts so that the reader can place the issues in context. Identify any prior orders relevant to the present motion, and briefly explain the facts leading up to the filing of the motion or the context in which the motion arises.
  - c. Consider starting the statement of facts with a sentence or two explaining the nature of the case. For example, "This action arises out of an alleged breach of contract, personal injury, wrongful termination, etc."
  - d. When the outcome of a motion turns on particular facts or evidence, cite to (and attach) evidence supporting those facts. (See *Smith, Smith & King v. Superior Ct.* (1997) 60 Cal.App.4<sup>th</sup> 573, 578, indicating that matters set forth in an unverified statement of facts are not evidence and cannot provide a basis for granting, or denying, motion.)
  - e. Conclude the statement of facts with a brief explanation as to precisely what relief or order the court is being asked to make, and the grounds for same. (See Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 9:72.)

- 3. Use Headings
  - a. Good headings help to organize a paper and make it easier to read and follow.
  - b. A heading should be a one-sentence *summary* of the underlying argument, as opposed to merely a title. For example, instead of a heading reading "The Demurrer to the First Cause of Action for Breach of Contract Should Be Sustained," it should provide a summary of the argument, such as "The Demurrer to the First Cause of Action for Breach of Contract Should Be Sustained Because, Based on the Exhibit Attached to the Complaint, the Statute of Limitations has Run."

#### 4. Argument

- a. Good organization is key! Make it easy for the reader. Consider creating a brief outline of the issues and argument before actually writing the paper. Papers that ramble, jumping from issue to issue, with no structure, are extremely difficult to follow, and there is a great likelihood that issues will be missed by the reader.
- b. If an introduction is included in the paper, the argument should follow the issues raised in the introduction in the same order.
- c. Focus on the strongest arguments first, and fully develop each argument before moving on to the next. Avoid jumping back and forth.
- d. Check citations for accuracy and make sure that the authority cited actually stands for the proposition for which it is being cited. Be careful not to take portions of cases out of context. Many times attorneys cite to a particular sentence or paragraph in a case for a particular proposition without actually reading the case and realizing that either it does not stand for the proposition cited, or it actually stands for the opposite. Failure to accurately cite authority negatively impacts one's credibility with respect to the argument as a whole.
- e. It is better to cite to one or two good cases on point and discuss those cases in a little detail rather than merely string citing.
- f. When opposing a motion, do not avoid issues raised in the moving papers. Address each of the issues raised by the opponent in a

separate section, and either explain why the issue is without merit or irrelevant, or whether the issue is conceded.

### C. Tips to Bringing Motions in General

- 1. Keep motions as brief as possible.
- 2. Tone/Civility/Professionalism -- Keep the tone of the moving and opposing papers professional and civil, and avoid insulting the opposing party or opposing counsel. Hyperbole, exaggeration, disrespect, and arguments belittling one's opponent does nothing to advance a client's position, and, in fact, is more likely to diminish the persuasive force of the moving or opposing papers and hurt one's own credibility. The most persuasive papers present temperate, well-reasoned arguments. (Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeal & Writs (The Rutter Group 2005), ¶9:29.)
- 3. Check the California Rules of Court for additional requirements regarding the content of certain motions (e.g., motions to be relieved as counsel [Cal. Rules of Court, rule 3.1362], motions for leave to amend pleadings [Cal. Rules of Court, rule 3.1324], motions for continuance [Cal. Rules of Court, rule 3.1332], etc.). (NOTE: There are a number of significant changes to the California Rules of Court that took effect January 1, 2007, including a re-numbering of all the rules. Make sure you are review and cite to the new rules.)

# To download a copy of a rule conversion table, go to the following website and look under rules: www.courtinfo.ca.gov/courtadmin/aoc/

- 4. Proofread papers before filing them.
- 5. Use exhibit tabs to mark and separate exhibits to make it easier for the court to find the exhibits. Do *not* merely insert a marked cover page in front of each exhibit. *Highlight* relevant portions of exhibits.
- 6. Exhibits must be properly authenticated by declarations, based on personal knowledge, or other evidence establishing that the writing is what it purports to be. (See Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 9:53a.) Often when submitting exhibits, attorneys attempt to authenticate same merely by submitting a declaration stating that a true and correct copy of the exhibit is attached thereto. Such statement, by and of itself, is insufficient.
- 7. In addition to attaching a copy of a proposed amended pleading as an exhibit to a motion for leave to amend (see Cal. Rules of Court, rule

3.1324, subd. (a)(1)), make sure to *lodge* the signed original with the court.

- 8. If a proposed order is submitted, it must by *lodged* with the court and *served* with the moving papers. (Cal. Rules of Court, rule 3.1113, subd. (n).) Do *not* attach proposed orders to the moving papers.
- 9. The Rutter Group guides are a great source of practical information.

#### **D.** Notices of Motion

- Take Care with the First Paragraph -- Set forth the nature of the order sought and the ground(s) for the motion in the *opening paragraph*. (Cal. Rules of Court, rule 3.1110, subd. (a).) For example: "Pursuant to Code Civil Procedure section 473, subdivision (b), defendants A and B move this court for an order vacating and settings aside the defaults entered against them on June 6, 2006. Said motion is made based upon counsel's sworn affidavit attesting to his mistake, inadvertence, surprise, or neglect."
- 2. Make Proper Sanctions Request -- Because of due process concerns, it is very important to make a sanctions request in the notice of motion, including the type and amount of sanctions sought, and to whom the sanctions request is directed (i.e., attorney, client, or both). (See Jansen Associations, Inc. v. Codercard, Inc. (1990) 218 Cal.App.3d 1166, 1170 ["[C]ase law is clear that in order to impose sanctions against an attorney acting on behalf of a named party, the notice itself must clearly provide that sanctions are being sought against the attorney."].) Thus, a plaintiff giving notice that it is seeking sanctions "against defendants" in conjunction with its motion to compel discovery cannot successfully argue for imposing sanctions against defense counsel.
- 3. Use Quotes When Moving to Strike -- California Rules of Court, rule 3.1322 requires the moving party to quote the portions sought to be stricken unless the entire paragraph, cause of action or defense is sought to be stricken. Although not required, often it is a good idea to go ahead and quote the entire portions sought to be stricken even if it is to an entire paragraph.
  - a. Also, the specifications *must* be numbered consecutively. (Cal. Rules of Court, rule 3.1322, subd. (a).) Numbering often helps because the court can more easily organize and deal with each portion sought to be stricken. For example, the court can state that the motion to strike Nos. 1, 4, and 6 are granted; and the motion to strike Nos. 2, 3 and 5 are denied.

b.

For example: Pursuant to Code Civil Procedure sections 435 and 436, Defendants X, Y & Z move for an order striking the following portions of Plaintiff's Second Amended Complaint as follows:

- Page 5, entire paragraph 22 ("The aforementioned conduct of the Defendants, and each of them, was despicable, willful, fraudulent, malicious and oppressive.");
- 2) Page 6, paragraph 28 at lines 4-6 ("Plaintiff therefore seeks exemplary damages according to proof."); and
- 3) Page 8, entire paragraph 7 of the prayer for judgment ("For exemplary damages according to proof;").

#### E. Case Citations

- 1. Avoid String Cites -- Do not use more citations than needed. "String" cites are of little help and they suggest that the court must read all of the cases cited. Moreover, they are annoying and distract from the points being raised.
- 2. Use the California Style Manual or "Harvard Bluebook" -- Whichever you choose, make sure you remain <u>consistent</u> throughout the memorandum. (Cal. Rules of Court, rule 3.1113(i).)
- 3. Provide Pinpoint Cites -- Do not expect the reader to take the time to determine on its own which specific portion of the opinion stands for the proposition being made.
- 4. Take Care to Abbreviate Subsequent References -- When abbreviating citations, it is usually helpful to provide the reporter and volume number, although not required. Thus, for example: *Ehrenclou*, 117 Cal.App.4<sup>th</sup> at 366. And NOT: *Ehrenclou*, *supra*, at p. 366. Too often attorneys fail to provide the full cite anywhere in the points and authorities or the full cite appears numerous pages before the abbreviated reference.
- 5. Help the Court When Citing Recently Filed California Opinions or Computer-Based Sources: Although not required, when dealing with a recently filed california opinion, it is often helpful to provide a citation to the Daily Appellate Report, Westlaw, LexisNexis or similar source.

- a. For example, "*People v. Massie* (July 7, 2006, S010775) Cal.4<sup>th</sup> [99 D.A.R. 12109; 2006 WL 999999; 2006 Cal.App. Lexis 4567]"
- b. Also, you may want to provide both the Westlaw *and* Lexis cites since different research attorneys and different judges tend to prefer using one over the other.
- 6. Provide a Brief Parenthetical -- Or quote a passage if it is short and directly on point. Don't expect the reader to review each case cited and determine on its own how the case relates to the argument being made.
- 7. Take Care When Citing to Non-California Authorities -- Take the time to briefly explain why non-California authorities are being cited if not obvious -- e.g., explain that there are no California cases dealing with the issue or on point.
- 8. Generally, Do Not Cite Unpublished Authorities -- Unless they meet the requirements of California Rules of Court, rule 8.1115, *do not* cite unpublished California authorities, even if you inform the Court that it is unpublished. There appears to be a recent trend in citing unpublished California cases as authority. Some attorneys appear to think that citing unpublished California cases is permissible so long as the attorney mentions that the case is unpublished. NOT SO.
- 9. Attach Recently filed California Opinions -- If a California case is cited before it is published in the Official Reports, attach a copy of the case tabbed as an exhibit. Although a case appearing in the Advance Sheets is not required to be attached, it saves time and avoids problems in obtaining a copy of the opinion.
- 10. Know When to Lodge Authorities -- The rules require that when "any authority other than California cases, statutes, constitutional provisions, or state or local rules" is cited, a copy must be lodged and tabbed as an exhibit. (Cal. Rules of Court, rule 3.1113(j).) Attorneys are generally pretty good about following this rule when it comes to non-California authorities, including federal authorities, but fail to recognize that regulatory materials and municipal codes must also be lodged. Thus, for example, please provide a copy of the Santa Ana Municipal Code and the California Code of Regulations if you cite them.

#### F. Requests for Judicial Notice

1. Make Request in a Separate Document (Cal. Rules of Court, rule 3.1113(m).) Be certain, however, to also make the request in the points and authorities. (See Code Civ. Proc., §§ 430.70 [requiring request to be

specified in the demurrer or points and authorities] and 437(b) [same, except as to motions to strike].)

- 2. Provide a Copy of the Matter (Cal. Rules of Court, rule 3.1306(c).)
- 3. List the Documents and Tab Them
- 4. Provide a Declaration -- Provide a brief declaration authenticating that the copies of those documents sought to be judicially noticed are in fact "true" copies. Certified copies also are appropriate in certain situations, such as records from another court.
- 5. Specify Grounds -- Don't just cite generally to Evidence Code sections 452 and 453 and expect the court to determine for itself which subsection of those code provisions, if any, apply.
- 6. Specify Exactly of Which You Are Requesting the Court Take Judicial Notice (Cal. Rules of Court, rule 3.1113(m)) -- For example, are you asking the court to take judicial notice of the *existence* of a document, the *recording* of a document, or the *contents* of the document? Thus, for example, although it may be proper for the court to take judicial notice of a fact that a document was filed in a certain action, the court may not be able to take judicial notice of the facts presented within the body of the document filed. Remember, the hearsay rule still applies.

#### G. Declarations

- 1. Declaration Executed Out-of-State -- Such declarations must certify that they are being made under penalty of perjury "under the laws of the State of California." (Code Civ. Proc., § 2015.5, subd.(a); *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4<sup>th</sup> 601, 612, n.6.)
- 2. Personal Knowledge -- It is not enough for any declarant to simply state that he/she has personal knowledge of the facts contained in the declaration. The declaration must contain *facts* identifying the source of a declarant's personal knowledge. (See Evid. Code, § 702; *Osmond v. EWAP, Inc.* (1984) 153 Cal.App.3d 842, 851.) This is also true for authenticating documents.
- 3. Do Not Forget to Sign Declaration

#### **H.** Taking Motions Off Calendar or Continuing Same

- 1. Moving Party Must Request -- With the exception of the court on its own motion, only a moving party may take a motion off calendar or continue same.
- 2. Call As Soon As Possible -- If the moving party plans to take a motion off calendar or continue same, the moving party should contact the courtroom clerk as soon as possible to prevent the court from unnecessarily working up the motion and to prevent unnecessary appearances. Pursuant to California Rules of Court, rule 3.1304, subdivision (b), the moving party must *immediately* notify the court if a matter will not be heard on the scheduled date.

## III. Common Problems with Specific Motions

#### A. Summary Judgment/Adjudication

1. Role of Pleadings

- a. The pleadings are the starting point for any motion for summary judgment/adjudication because they define what issues and facts are material for purposes of the motion. (See, e.g., *Government Employees Insurance Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98 n.4.)
- b. Defendants seeking summary judgment/adjudication must address all theories of liability alleged in the complaint.
- c. Opposition cannot defeat motion for summary judgment/adjudication based upon claim or defense not yet pled; leave to amend must be sought prior to the hearing on the motion. (See, e.g., *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1699.)
- d. Beware of amendments to pleadings while motion for summary judgment/adjudication pending. Motion can be denied on grounds that it is no longer directed to the operative pleading. If leave to amend is sought while a summary judgment/adjudication motion is pending, indicate in the proposed order whether, and how, the amendment affects the pending motion for summary judgment/adjudication.

2. Amount of Notice

- a. 75 days plus additional time depending on means of service.
   (Code Civ. Proc., § 437c, subd. (a).) Court's website includes table of filing deadlines for all hearing dates.
- b. Absent written stipulation of the parties, the court lacks authority to shorten this time period. (Urshan v. Musician's Credit Union (2004) 120 Cal.App.4th 758, 763-66.)
- c. The court can allow hearing on motion less than 30 days before trial. (Code Civ. Proc., § 437c, subd. (a).)
- 3. Notice of Motion
  - a. Summary adjudication cannot be granted if notice of motion seeks summary judgment only.
  - b. If summary judgment is only relief sought, the existence of a triable issue on any cause of action defeats entire motion.
  - c. Summary adjudication may be brought as to one or more causes of action, one or more affirmative defenses, one or more claims of punitive damages, or one or more issues of duty. (Code Civ. Proc.§ 437c, subd. (f)(1).) No other issues are appropriate for summary adjudication.
  - d. When summary adjudication is sought, "the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." (Cal. Rules of Court, rule 3.1350(b).)
  - e. Summary adjudication must *completely dispose* of the cause of action, affirmative defense, claim for punitive damage, issue of duty to which it is directed. (Code Civ. Proc., § 437c, subd. (f)(1).)

#### 4. Separate Statement

a. "The Separate Statement of Undisputed Material Facts in support of a motion must separately identify each cause of action, claim, issue of duty or affirmative defense, and each supporting material fact claimed to be without dispute with respect to the cause of action, claim, issue of duty, or affirmative defense." (Cal. Rules of Court, rule 3.1350, subd. (d).) b. Care must be taken to carefully draft separate statement to provide all facts necessary to grant the motion on the grounds argued. For example, if fraud claim alleges that misrepresentations were made both orally and in writing, motion would be denied if separate statement simply states that defendant had no written communications with plaintiff.

- c. The opposing party must state whether each fact is disputed or undisputed. (Code Civ. Proc., §437c, subd. (b)(3); Cal. Rules of Court, rule 3.1350, subd. (f).) Court has discretion to treat failure to comply with separate statement requirement as grounds for granting motion. (Code Civ. Proc., § 437c, subd. (b)(3).)
  - 1. Do not simply object to other side's material facts.
  - In separate statement, do not simply state objections to other side's evidence. (See Cal. Rules of Court, rule 3.1354, subd. (b), indicating that objections *must not* be restated or reargued in the separate statement.)
- 5. Evidence
  - a. All evidence must be admissible evidence.
    - 1) Make sure that declarations are from persons with personal knowledge and be sure to state facts showing such knowledge.
    - 2) "All documentary evidence (e.g., contracts, correspondence, pleadings, etc.) must be presented in *admissible* form. Basically, this means that the evidence must be:
      - Properly identified and *authenticated*;
      - Admissible under the secondary evidence rule;
      - *Nonhearsay*, or admissible under some exception to the hearsay rule." (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 10:169

(Note: Do not fail to oppose a summary judgment/adjudication motion based on the moving party submitting otherwise inadmissible evidence. Although the evidence may be objectionable, the court may consider the evidence if no objection to the evidence is made. [Code Civ. Proc., § 437c, subd. (b)(5), indicating "[e]videntiary objections not made at the hearing shall be deemed waived.") b.

Note, if a party provides expert testimony on his/her own behalf in support of a motion for summary judgment/adjudication (such as in medical malpractice cases), the party may be deemed to have waived the attorney-client and attorney work-product privilege with respect to the matters discussed in the declaration. (See Evid. Code § 912; *Shooker v. Sup.Ct.* (2003) 111 Cal.App.4<sup>th</sup> 923, 930, indicating that if a party testifies as an expert witness the attorney work-product and attorney client privileges are waived.)

- 6. Evidentiary Objections
  - a. Written objections must comply with California Rules of Court, rule 3.1354, which includes significant changes to prior Rule 345. Failure to comply with the requirements may result in the court refusing to rule on your objections.
    - Written objections are due earlier. Unless otherwise excused by the court on a showing of good cause, written objections in support of or in opposition to a motion for summary judgment/adjudication must be served and filed at the same time as the objecting party's opposition or reply papers are served and filed. (Cal. Rules of Court, rule 3.1354, subd. (a).) (Note: This a change from the prior rule, which required written objections to be filed and served no later than 4:30 p.m. on the third day before the hearing.)
    - 2) Written objections must be filed separately. "All written objections to evidence must be served and filed separately from the other papers in support of or opposition to the motion." (Cal. Rules of Court, rule 3.1354, subd. (b).) (This was not a previous requirement under Rule 345.)
    - 3) Numbered consecutively. "Each written must be numbered consecutively and must:

(1) Identify the name of the document in which the specific material objected to is located;

(2) State the exhibit, title, page, and line number of the material objected to;

(3) Quote or set forth the objectionable statement or material; and

(4) State the grounds for each objection to that statement or material." (Cal. Rules of Court, rule 3.1354, subd. (b).) (This too is a change from Rule 345.)

4) **Reference to objection is separate statement.** The objections *must not* be restated or reargued in the separate statement.

Objections on specific evidence, however, may be referenced by *the objection number* in the right column of a separate statement in opposition or reply to a motion. (Cal. Rules of Court, rule 3.1354, subd. (b).) (This was not a previous requirement under Rule 345.)

- Format of objections. Written objection must follow one of two formats listed in California Rules of Court, rule 3.1354, subd. (b). (Refer to Rule 3.1354 for the two approved formats. This was not a previous requirement under Rule 345.)
- 6) **Proposed order.** A proposed order must be submitted with the objections, and must follow one of two formats, which include places for the court to indicate whether it has sustained or overruled each objection, and a place for the signature of the judge. (Cal. Rules of Court, rule 3.1354, subd. (b).) (Refer to Rule 3.1354 for the two approved formats. This was not a previous requirement under Rule 345.)
- b. Use good judgment when making evidentiary objections. Do not make objections for the sake of making objections. If a particular fact is *undisputed*, do not make an objection to the evidence offered in support of the undisputed fact.

#### 7. Burdens on Motion

- a. The initial burden is on moving party to show that there is no triable issue of material fact. Opposing party has no obligation to submit any declarations or other evidence if the moving party fails to meet initial burden i.e., the burden does not shift until, and unless, the moving party meets its initial burden. (See, e.g., Consumer Cause, Inc. v. SmileCare (2001) 91 Cal.App.4<sup>th</sup> 454, 468.) Thus, even an unopposed motion for summary judgment/adjudication will be denied if the moving party has failed to meet its initial burden.
- b. Defendant can meet initial burden by showing that (1) plaintiff's claim cannot be established (i.e., negating an element of the claim), (2) plaintiff lacks evidence on a critical element of plaintiff's claim, or (3) defendant has a complete defense.
  - 1) In attempting to show that plaintiff lacks evidence on a critical element, defendant cannot simply argue that plaintiff lacks evidence. Defendant must present evidence showing that plaintiff does not possess *and cannot*

reasonably obtain needed evidence. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854.)

- 2) In attempting to show that plaintiff cannot establish an element of his or her claim, defendant should first identify what the elements of the challenged claim are and then which element is being challenged.
- c. Plaintiff can meet initial burden by producing admissible evidence on *each* element of a cause of action.

#### **B.** Anti-SLAPP Motions

- 1. Timing of Motion:
  - a. Generally, must be filed within 60 days after service of the complaint or amended complaint, though the court may accept later filing upon terms it deems proper. (Code Civ. Proc., § 425.16, subd. (f).)
  - b. Time is extended where amended complaint is served by mail. (Code Civ. Proc., § 1013, subd. (a).)
  - c. Filing an amended complaint reopens the 60 day time period in which to file an anti-SLAPP motion. (*Yu v. Signet Bank/Virgina* (2002) 103 Cal.App.4<sup>th</sup> 298, 314.)
  - d. Anti-SLAPP motion may be filed before *or after* the defendant answers the complaint or amended complaint. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:241.15.)
- 2. When is Anti-SLAPP Motion Applicable?
  - a. Written or oral *statements or writings* made *before* a legislative, executive, or judicial, or other official proceeding. (Code Civ. Proc., § 425.16, subd. (e)(1); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:208.)
    - 1) Statement or writing need not concern issues of public interest
    - 2) Statement or writing need not be made in a public forum.
    - 3) No nexus required between the statement or writing and an issue under consideration by a public body.

- 4) Not limited to statements or writings concerning constitutional rights.
- b. Written or oral statements or writings made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other legally authorized official proceeding. (Code Civ. Proc., § 425.16, subd. (e)(2); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:208.)
  - 1) Statement or writing need not concern issues of public interest.
  - 2) Statement or writing need not be made in a public forum.
  - 3) Nexus *is* required between the statement or writing and an issue under consideration by a *public* body.
  - 4) Not limited to statements or writings concerning constitutional rights.
- c. Written or oral statements or writings made in a place open to the public or in a public forum, in connection with an issue of public interest. (Code Civ. Proc., § 425.16, subd. (e)(3); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:208.)
  - 1) Statement or writing *must* concern issues of public interest.
    - a) "Public interest" is broadly construed.
    - b) Advertising and commercial speech do not raise a public issue. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:234.15.)
  - 2) Statement or writing *must* be made in a *public* forum.
  - 3) No nexus required between the statement or writing and an issue under consideration by a public body.
  - 4) Not limited to statements or writings concerning constitutional rights.
- d. Any other *conduct* in furtherance of the exercise of the *constitutional right* of petition or right to free speech *in connection*

with an issue of public interest. (Code Civ. Proc., § 425.16, subd. (e)(4); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:208.)

- 1) Unlike other categories above, this category pertains to *conduct*, not oral or written *statements*.
- 2) Conduct *must* concern issues of public interest.
- 3) Conduct need *not* occur in a public forum.
- 3) No nexus required between conduct and an issue under consideration by a public body.
- 4) Expressly limited to the exercise of *constitutional* rights.
- 3. The Parties' Burdens
  - a. Defendant's burden: The only thing that defendant need show is that plaintiff's lawsuit arises from defendant's exercise of free speech or petition rights as defined in Code of Civil Procedure section 425.16, subdivision (e) i.e., defendant must make a prima facie showing that one of the above categories apply. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:244.)
    - The motion must be supported by declarations stating facts upon which the defense is based. (Code Civ. Proc., § 425.16, subd. (b)(2); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:243.)
    - 2) No intent to chill required.
    - 3) Unless defendant makes the threshold showing, the burden does *not* shift to plaintiff to establish a probability of prevailing on the merits. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶¶ 7:244.1 and 7:245.)
  - b. **Plaintiff's burden:** Once defendant meets his/her threshold burden, the burden shifts to plaintiff to establish a *probability* that plaintiff will prevail on the causes of action asserted against the defendant. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:245.)

- 1) Plaintiff must show that the complaint is both legally sufficient and supported by sufficient facts to sustain a favorable judgment.
- 2) Plaintiff must establish, through admissible evidence, a prima facie showing of facts supporting a judgment in plaintiff's favor.
- 4. Select Issues Regarding Anti-SLAPP Motions
  - a. Discovery is stayed.
    - Unless the court orders otherwise, for good cause shown, all discovery proceedings are stayed *upon filing* of an anti-SLAPP motion, and the stay remains in effect until notice of entry of order ruling on motion. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:258.)
    - 2) If plaintiff requires discovery to oppose the motion, plaintiff must move for an order allowing such discovery, and if necessary, a continuance of the hearing. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:258.1)
    - 3) If the court permits discovery, it will be limited to the issues raised in the anti-SLAPP motion. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶ 7:

## b. Amended pleadings not allowed.

- Plaintiff cannot avoid an anti-SLAPP motion by filing an amended pleading while an anti-SLAPP motion is pending. (Sylmar Air Conditioning v. Pueblo Contracting Services, Inc. (2004) 122 CA4th 1049, 1055; Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:260.)
- 2) Moreover, if the anti-SLAPP motion is granted, the court may not grant plaintiff leave to amend any causes of action subject to anti-SLAPP motion. (Simmons v. Allstate Ins. Co. (2001) 92 Cal.App.4<sup>th</sup> 1068, 1073; Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:257a.)

- 5. Attorney Fees
  - a. Prevailing Defendant: A defendant prevailing on an anti-SLAPP motion is *entitled* to recover his/her attorney fees and costs. The award of fees is mandatory. (Code Civ. Proc., § 425.16, subd. (c); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:259.)
  - b. Prevailing Plaintiff: A plaintiff who prevails on an anti-SLAPP motion is entitled to attorney fees and costs if the anti-SLAPP motion is found to be "frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 425.16, subd. (c); Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:259.)
  - c. Effect of Dismissal:
    - Court-ordered dismissal: A court-ordered dismissal before the anti-SLAPP motion is heard (e.g., by granting of a motion for judgment on the pleadings or sustaining a demurrer without leave to amend), does not render moot a fee request under an anti-SLAPP motion. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:260.7.)
    - Voluntary dismissal: Where a plaintiff voluntarily dismisses and action prior to an anti-SLAPP motion being heard, the defendant might still be entitled to attorney fees and costs, if plaintiff's case is shown to be a "pure SLAPP suit." (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2006), ¶7:260.5

#### C. Motions to Withdraw as Counsel

- 1. The most often *un*opposed motion which is denied!
- 2. Very technical motion you *must* comply with *every element* of California Rule of Court, rule 3.1362.
- 3. If unable to locate client, must serve the clerk of court. (Code Civ. Proc., § 1011, subd. (b); Cal. Rules of Court, rule 3.1362, subd. (d)(2).)
- 4. Use mandatory Judicial Council forms. (Cal. Rules of Court, rule 3.1362, subd, (a), (c), and (e).)
- 5. Practice Tip: Be *very* careful what you put into your supporting declaration regarding your own client! (In your zeal to have your motion

granted, you do not want to in any way put the client in a compromise position regarding the still-pending matter.)

#### **D.** *Demurrers*

- 1. Probably the most commonly misused and judicially disfavored motion.
- 2. Filing demurrers to answers *are especially disfavored*.
- 3. Timing for filing: 30 days after served with pleading (Code Civ. Proc., § 430.40), AND only *10 days* after served with complaint that has been amended after demurrer was sustained with leave to amend. (Cal. Rules of Court, rule 3.1320, subd. (j)(2).) (Failure to timely file demurrer may result in court overruling same as untimely without reaching the merits.)
- 4. Before filing consider: What is it likely to accomplish of real significance?
- 5. Consider also the possible negatives; you may unwittingly:
  - a. Educate your opponent on the law.
  - b. Help your opponent correct pleadings.
  - c. Annoy opposing counsel and/or the judge if your demurrer is not well taken.
- 6. Remember: Leave to amend (*at least* one time) is almost always going to be granted. Consider filing only if defect can't be remedied by amendment.
- 7. Before opposing demurrer, objectively evaluate your own pleadings and use the telephone. Often you can stipulate to amend and obviate the necessity of a formal opposition and ruling by the court.
  - a. If going to be filing first amended pleading instead of opposing, do not wait until the last minute. Doing so, may result in the court having needlessly worked up the demurrer.
- 8. Remember, demurrer cannot be used to attack improper remedy (e.g., punitive damages) need to file motion to strike.
- 9. No declarations are permitted in support of demurrer since a demurrer merely tests the sufficiency of the pleadings.

## E. Motions to Strike

- 1. Similar to demurrers but even more narrow in scope.
- 2. Use only if you have a real chance to get some specific allegation *permanently* eliminated from your case (i.e., a legally unsupportable prayer for punitive damages in a breach of contract or wrongful death case, or legally unsupportable prayer for attorney fees).
- 3. Can also remove offensive and totally irrelevant allegations, but only in cases of manifest pleading abuse.

## F. Good Faith Settlement Motions

- Controlling authority is California Code of Civil Procedure sections 877 and 877.6, and *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 39 Cal.3d 488 and *Abbott Ford, Inc. v. Sup. Ct.* (1987) 43 Cal.3d 858. (Zerne, Haning, Flahavan, & Kelly, Cal. Prac. Guide: Personal Injury (The Rutter Group 2006) ¶¶ 4:191, et seq.)
- 2. Note the "ex parte" option. (Code Civ. Proc., § 877.6, subd. (a)(2).)
- 3. Burden of proof is on the opposing party.
- 4. <u>Practical</u> considerations will most often prevail over technical legal comparative liability analyses (i.e., if defendant has no significant assets and is paying full insurance policy limits, the motion will most likely be granted regardless of percentage of fault issues between co-defendants or any theoretical prorata share analysis for plaintiff's total economic/non-economic damages).
- 5. Plaintiffs beware the granting of a good faith settlement is <u>not</u> determinative of Proposition 51 issues at trial.

## G. Motions to Continue Trial

- 1. Generally a disfavored motion in most trial courts.
- 2. *Must* be supported by affirmative showing of "good cause" (and consideration to the court's calendar). (Cal. Rules of Court, rule 3.1335; Code Civ. Proc., §595.2; *Pham v. Nguyen* (1997) 54 Cal.App.4th 11, 15.)
- 3. Know your judge! Each judge has broad discretion and variation of policy on the issue of continuing trials.

- 4. Practical considerations for greater success include:
  - a. Bring as early as possible before trial. (It is easier for court to readjust its trial calendar/case load when you bring the motion weeks vs. days before your scheduled trial date). (*Pham, supra,* 54 Cal.App.4th 11.)
  - b. Have parties in agreement on the need and new trial date requested whenever possible.
  - c. Be judicious of Code of Civil Procedure section 595.2 and *Pham* case; employ discretion and tact! (It's still going to be the judge's call 99.9% of the time. Always couch your motion or application in the form of a stipulation of the parties *and request* for an order granting continuance; since the court is not bound by the stipulation or agreement of the parties!)

#### H. Joinders

Need separate and timely notice of motion seeking relief in the name of the party joining in the motion. (*Decker v. U.D. Registry, Inc.* (2003) 105 Cal. App. 4th 1382, 1390-91.)

#### J. Discovery Motions

- 1. Burden on Motions
  - a. On a motion to compel further responses, the party asserting the objection has the burden of justifying the objection. (*Fairmont Insurance Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 citing *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-21.)
  - b. Motion to compel further responses to a document demand requires the moving party to set forth specific facts showing good cause justifying the discovery sought by the document demand. Hence, the initial burden is on the party making the motion and the party asserting the objections only has to justify the objections if good cause is shown. (Code Civ. Proc., § 2031.310, subd. (b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.)
- 2. Separate Statements They need to be specifically tailored to each particular request. Do not simply restate 10 pages of points and authority for every single request with the expectation that what you need is in there somewhere. Instead, explain why the specific information is relevant and address only the specific objections that are asserted.

3. Sanctions Requests – Code of Civil Procedure section 2023.040 provides as follows: "A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought."

## J. Motions to Enforce Settlements

- a. Signed writing or oral stipulation in court by the parties (not counsel) is required for an enforceable settlement under Code Civil Procedure section 664.6.
- b. Any agreement for the court to retain jurisdiction to enforce settlement must also be in a signed writing or oral stipulation in court by the parties (not counsel).
- c. Agreement for court to retain jurisdiction, by itself, is not enough. The parties must request that the court retain jurisdiction. If dismissal is filed or ordered, the court lacks subject matter jurisdiction to enforce settlement. Parties must either set aside dismissal or file separate action. (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1009; *Basinger v. Rogers & Wells* (1990) 220 Cal.App.3d 16, 21.)

## IV. Law and Motion Procedures Unique to the Civil Complex Panel

## A. Law and Motion at the Civil Complex Center

- 1. <u>Compute your filing and notice deadlines accurately</u>: Motions continue to be filed tardily, and often reflect provision of inadequate notice. Absent express or implied waiver by the 'other side', Court must deny (or continue) a motion in the face of filing/notice defects. The impact of filing/notice problems multiplies exponentially, where many attorneys/parties are involved - as in most 'complex' lawsuits.
  - Basic Filing/Notice' required for a motion is spelled out in AB 3078, enacted 7/15/04, and Code of Civil Procedure section 1005, subdivision (b) (revised effective 1/1/05) that requires a motion to be filed at least 16 court days before the intended hearing date and that requires 16 court days notice, increased by 5 calendar days if both place of mailing, and place of address, are within the State of California.

- b. Code of Civil Procedure section 1005, subdivision (b), now requires that oppositions to be served at least 9 <u>court</u> days, and all reply papers served at least 5 <u>court</u> days, before the hearing.
- c. **'Counting the days'** is explained in Code of Civil Procedure sections 12, 12a, and 12b.
- d. Examples of 'special filing/notice' requirements:

**Motion for Summary Judgment** must be filed/served at least 75 <u>calendar</u> days before the hearing date - with 5 additional days notice, if served by mail from/to address in California = 80 <u>calendar</u> days notice required per Code of Civil Procedure section 437c, subdivision (a). Oppositions are due on such motions at least 14 <u>calendar</u> days before the hearing date (<u>earlier</u> than the normal 9 <u>court</u> day deadline for most motions) per Code of Civil Procedure section 437c, subdivision (b)(2) - and replies on such motions are due at least 5 <u>calendar</u> days before the hearing date (*oddly*, <u>later</u> than the normal 5 <u>court</u> day deadline for most motions) per Code of Civil Procedure section 437c, subdivision (b)(4).

Motion to Certify a Class, on the other hand, must be filed/served at least 28 <u>calendar</u> days prior to hearing, with any Opposition due at least 14 <u>calendar</u> days, and any reply due at least 5 <u>calendar</u> days, before the hearing date. (Code Civ. Proc., § 3.764, subd. (c)(1).)

While, technically, a class action settlement includes a request for "provisional certification" for purposes of preliminary settlement approval - said notice requirements are often "deemed waived" where it is clear that both sides are supporting the motion.

Motion for Reconsideration, authorized by Code of Civil Procedure section 1008, subdivision (a) - is subject to a 10 day deadline (*must be filed within 10 days after service of notice of entry of the challenged order*). Note: Court loses jurisdiction to rule on reconsideration motion if not heard before entry of judgment. (APRI Insur. Co. v. Sup. Ct. (1999) 76 CA4th 176, 181-182.)

Motion to Quash Service, authorized by Code of Civil Procedure section 418.10, subdivision (a) - must be brought on or before 'the last day to plead' (*i.e. within 30 days of 'service'*) - unless the Court, upon *good cause*, extends that deadline.

Motion to Tax Costs must be filed/served within 15 <u>calendar</u> days after service of Memorandum of Costs (+ 5 days if served by mail to California address) per California Rules of Court, rule 3.1700 and Code of Civil Procedure section 1013.

Notice of a Motion for New Trial must be filed/served before entry of judgment, <u>or</u> within 15 days of date of mailing of notice of entry of judgment (*by Clerk or any party*), <u>or</u> within 180 days after entry of the Judgment - whichever is *earliest*. (Code Civ. Proc., § 659.)

Motion for pre-judgment Attorney Fees must be filed on or before: 60 days after service of the Notice of Entry of Judgment <u>or</u> 180 days after entry of judgment, whichever is *earlier*. (Cal. Rules of Court, rules §§ 3.1702 and 8.104.)

**Tip**: while deadline for a Reply to some motions may fall 'later' than general Code of Civil Procedure section 1005 requirements - please note there **is no 'penalty' for early filing** of a Reply! In CX103, for instance, filing of a reply to a summary judgment motion at 4:59 pm on Wednesday before the hearing (*Monday law & motion calendars*) leaves the Judicial Officer with only 2 'actual' days to review your Reply (*and normally CX103 is 'in trial' during Thursday and Friday of each week*). Any delay in processing of 'e-filings' may leave the Judicial Officer with even less time (*sometimes a large stack of e-filings takes 1-2 days to 'separate' and distribute*). While many of our Judicial Officers do 'work on a Saturday or Sunday'- please do <u>not</u> rely on that fact.

<u>**Tip**</u>: absent ex parte authorization to file a 'late document' - it is <u>improper</u> to file 'supplemental oppositions', or 'sur-replies'.

- 2. <u>Check your 'proof of service':</u> Make sure it is attached to moving papers, or gets filed no later than 5 calendar days prior to your hearing, per California Rules of Court, rule 3.1300, subdivision (c). <u>Proofread it!</u> (to make sure date of mailing is completed, place of mailing, complete/correct address of addressee(s), that verification language is there, and that it is signed!). Best to attach your proof of service to your moving papers (otherwise risk Clerk failure to recognize a later-filed proof of service, as pertaining to an upcoming law and motion matter).
- 3 <u>Late papers may be disregarded!</u> Counsel too often file their papers (even moving papers) late - relying on Court's 'good graces' to consider everything filed. Court has discretion to <u>disregard</u> late papers - and will do so - particularly where offending attorney makes a habit of imposing on the Court, and opposing counsel, in that fashion. (Cal. Rules of Court, rule 3.1300, subd. (d).)

- 4. **Bring your motions in a** *timely* **fashion:** Remember, motions to compel 'further' discovery responses must be 'noticed' within 45 days of <u>service</u> of the existing discovery responses:
  - a. Code of Civil Procedure section 2030.300, subdivision (c), as to further responses to interrogatories;
  - b. Code of Civil Procedure section 2031.310, subdivision (c), as to further responses to demands for inspection;
  - c. Code of Civil Procedure section 2033.290, subdivision (c), as to further responses to requests for admission.
- 5. Need 'writing' to confirm agreement between counsel, to extend those deadlines.
- Also, keep in mind the 15-day cut-off for hearing of discovery motions before trial per Code of Civil Procedure section 2024.020, subdivision (a) and fact that summary judgment motions must be heard no later than 30 days before trial per Code of Civil Procedure section 437c, subdivision (a) (unless Court for good cause orders otherwise).
- 7. Many attorneys miss fact that Demurrers must be <u>set</u> for hearing within 35 days of <u>filing</u> per California Rules of Court, rule 3.1320, subdivision (c) (*unless Court for good cause orders otherwise*). Similar mistake can be made with respect to motions to quash service (*need to be set for a hearing date within 30 days of filing*), per Code of Civil Procedure section 418.10, subdivision (b). Attorneys make 'mistake' when offered 'their pick' of law & motion dates. 'Blaming' the Clerk for the date scheduled is <u>not</u> recommended (*Court is aware that the moving attorney, is the one 'choosing the dates'*).
- 8. Please comply with all 'good faith meet and confer' requirements of the California Discovery Act of 1986 and the California Code of Civil Procedure, as amended and Orange County's Civil Complex Department Guideline § III (available 'on line' at our Court website requires meet/confer statement at least 10 calendar days before hearing of motion and authorizes 'reasonable' sanction award where counsel unreasonably fails to resolve or settle a law and motion dispute). Judge Bauer will periodically refer to the concept as 'knees under the table' conferencing. One letter, without any phone call to confirm the letter was received or a real attempt to resolve discovery differences (genuinely considering the 'viewpoint' of the other side), will not be deemed sufficient.
- 9. <u>Remember your 'Separate Statements'!</u> Code of Civil Procedure section 437c, subdivision (b), requires a separate statement from <u>both</u> moving and opposing parties, with respect to a summary judgment motion

(*if lacking - Court has <u>discretion</u> to deny motion on that basis alone*). Also, remember that summary adjudication motion requires separation of each 'issue' in the supporting separate statement. California Rules of Court, rule 3.1020, requires a separate statement to support motions to compel 'further' discovery responses.

 Watch your 'format' rules! California Rules of Court, rule 3.1113, subdivision (d), limits 'points & authorities' to a maximum of 15 pages (both moving and opposing) - 20 pages for a summary judgment motion (Cal. Rules of Court, rule 3.1113, subd. (d)), or motion to certify a class (Cal. Rules of Court, rule 3.764, subd. (c)(2)). Violations of those limits may be treated as'late papers' (i.e. Court has discretion to disregard them).

**Tip**: Can request leave to exceed those limits via ex parte application - but should be no reason <u>pertinent</u> issues cannot be addressed in <u>any</u> motion in fewer than 10 pages. Most motions will be determined based upon only 1 case or 1 statute. Do not waste everyone's time by offering meaningless references to authority, or by repeating your planned 'final argument', in each motion filed by your office.

<u>**Tip</u>**: Bringing 'one demurrer' (15 pages of points & authorities) challenging certain causes of action - and a concurrent, 'second demurrer' (15 <u>more</u> pages of points & authorities) challenging 'other' causes of action = effectively may be considered <u>one 'combined' motion</u>, that exceeds the maximum page limit permitted by California Rules of Court, rule 3.1113, subdivision (d). Court may choose to consider one motion, or the other, or take both motions off-calendar, in those circumstances.</u>

California Rules of Court, rule 3.1112, requires motions that challenge pleadings (*eg. demurrer*), to state the specific portion challenged. Code of Civil Procedure section 430.60, permits Court to <u>disregard</u> a demurrer that fails to distinctly specify the grounds upon which it is brought.

Code of Civil Procedure section 2023.040, requires <u>notice</u> of any motion seeking discovery sanctions to identify, in the <u>notice</u>, the name of the party or attorney *against whom* the sanction is sought, and the *type* of sanction sought. Failure to comply with that requirement, may result in denial of your sanction request.

## 11. As to some specific 'types' of motions:

a. <u>Applications to appear *Pro Hac Vice*</u>: remember to comply with California Rules of Court, rule 9.40 - and include both residence and work address for applicant counsel - as well as description of any other such application in the preceding 2 years, in California. Also, be sure proof of service reflects mailing to the San Francisco office of the State Bar of California - and that proof of payment of the related fee, to said office, is provided (*in declaration form, or other 'proof'*).

- b. <u>Motion to be relieved</u>: California Rules of Court, rule 3.1362 <u>requires</u> use of notice, declaration, and order 'forms' (*MC-051*, *MC-052*, *MC-053*) - said forms are available 'on-line' at our Court website www.occourts.org. **Proof of service must reflect that a copy of said motion has been served on <u>the client</u>, as well** (all too often, the client, is 'overlooked', despite fact it is required, per California Rules of Court, rule 3.1362. Remember, Court must evaluate whether client will suffer 'prejudice', as result of such a motion (and withdrawal, a week before the start of a 3-month Trial, for instance - is likely to be deemed 'prejudicial').
- c. <u>Motions for final approval of class action settlements</u>: should provide detailed explanation of the outcome of any 'notice to the class' (confirming 'notice' effort completed - and degree to which completed and describing any objections, 'opt-outs', and information necessary to determine whether settlement is 'fair, adequate, and in the best interests of the class' - California Rules of Court, rule 3.769 (g)).
- 12. Please set that motion for hearing after expiration of the 'opt-out/obj' period so motion will not need to be continued, to permit filing of 'supplemental reports'. Requests for 'enhancement' compensation to the plaintiff/class representative, should be supported by detailed description of work on the case by that individual (detailed hourly breakdown if possible estimates of hours invested at a minimum, in declaration form). Attorney fee requests, likewise, should be supported by detailed hourly breakdowns, attached to a supporting declaration as part of the multiple levels of analysis described in Lealao v. Beneficial Calif., Inc (2000) 82 Cal.App.4<sup>th</sup> 19, 39-41, 45-46, 53 (consideration of numerous factors in making such an attorney fee award, including 'lodestar/hrly' analysis, application of any appropriate 'multiplier', comparison to '% of common fund' analysis, risk assumed, whether issues unique, level of attorney skill applied, outcome, and complexity of the litigation as a whole, among others).
- Generally: 'Form' of papers presented for filing is governed by California Rules of Court, rules 2.100-2.119, and general 'format' of 'noticed motions' is governed by California Rules of Court, rules 3.111 – 3.1116.

General rules for fax and electronic filing and service can be found in California Rules of Court, rule 2.300, et seq.

Restriction on oral testimony at law & motion hearing is addressed in California Rules of Court, rule 3.1306.

Ex parte relief requests, require showing of 'irreparable harm' (unless all parties agree, and have waived notice - via written stipulation).

All parties should cooperate in the adoption of a <u>consistent</u> proof of service 'list' in 'Complex' cases, whether alphabetical, or chronologically according to order of first 'appearance', in the case (so that research attorney can verify such 'lists' are 'complete', at a glance). Please continually update your proof of service 'list' (all too often, said lists overlook new parties who made 'first appearances' in a case in most recent month or two).

Moving party must <u>immediately</u> notify the Court if a matter will not be heard on the scheduled date, per California Rules of Court, rule 3.1304, subdivision (b). We appreciate that courtesy.

1 2 3 4	DEWEY, CHEATHAM & HOWE LLP IMA PARTNER (STATE BAR NO. 100000) HUMBLE ASSOCIATE (STATE BAR NO. 1234 Main Street Anytown, California 90000 Telephone: (949) 321-1000 Facsimile: (949) 321-1001	) 200000)	
5	Email: hassociate@dch.com		
6	Attorneys for Defendant ANOTHER CORP.		
7 8	SUPERIOR C	OURT OF CA	LIFORNIA
9	SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE, CENTRAL JUSTICE CENTER		
10	COULT OF ORAID	E, CENTRAL	JUSTICE CENTER
11	ONE CORPORATION, a California	Case No. 070	CC10000
12	corporation,		all purposes to
13	Plaintiff,	Hon. Callum	Likai Šeaum, Dept. C100
14	V.		T ANOTHER CORPORATION'S MOTION AND MOTION TO
15	ANOTHER CORPORATION, a California corporation,	DOCUMEN	ESPONSES AND PRODUCTION OF IS FROM PLAINTIFF ONE
16	Defendants.	MEMORAN	'ION AND FOR SANCTIONS; DUM OF POINTS AND LES IN SUPPORT THEREOF:
17			IES IN SUPPORT THEREOF; ION OF HUMBLE ASSOCIATE IN HEREOF
18		Date:	April 1, 2009
19		Time: Place:	9:30 a.m. Dept. C100
20		Action filed:	January 13, 2008
21		Trial date:	September 29, 2009
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## **NOTICE OF MOTION AND MOTION**

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3	TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:		
4	PLEASE TAKE NOTICE that, on April 1, 2009, at 9:30 a.m., or as soon thereafter as		
5	the matter can be heard, in Department C100 of the above-referenced Court, located at 700 Civic		
6	Center Drive West, Santa Ana, California 92701, Defendant Another Corporation (Another Corp.)		
7	will, and hereby does, bring this Motion to Compel Responses and Production of Documents from		
8	Plaintiff One Corporation (One Corp.).		
9	The Motion will seek, and hereby does seek, an order compelling One Corp. to (1)		
10	serve responses without objections to the "Request for Production of Documents (Set One)		
11	Propounded by Defendant Another Corporation to Plaintiff One Corporation" (the Requests), (2)		
12	produce all responsive documents, and (3) pay sanctions of \$490 to Another Corp.		
13	This Motion is made pursuant to California Code of Civil Procedure section 2031.300		
14	on the ground One Corp. has failed to serve a timely response to the Requests. It is based upon this		
15	Notice of Motion and Motion, the Memorandum of Points and Authorities attached hereto, the		
16	Declaration of Humble Associate and accompanying exhibits attached hereto, the pleadings, papers,		
17	and other documents on file herein, and such further evidence or argument as the Court may properly		
18	consider at or before the hearing on this Motion. This Motion does not require a separate statement		
19	because "no response has been provided to the request for discovery." (Cal. Rules of Court, rule		
20	3.1020(b).)		
21	Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP		
22			
23	By:		
24	Humble Associate		
25	Attorneys for Defendant ANOTHER CORP.		
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LAW OFFICES OF DEWEY, CHEATEM & 8	57551\320994v1 1		
HOWE	DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS		

## **MEMORANDUM OF POINTS AND AUTHORITIES**

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3	Months ago, Defendant Another Corporation (Another Corp.) served document		
4	requests on Plaintiff One Corporation (One Corp.). Another Corp. gave One Corp. two extensions to		
5	respond. One Corp. has served no response. None. Another Corp. respectfully seeks an order		
6	compelling One Corp. to (1) serve responses to its document requests forthwith and without		
7	objections, (2) produce all responsive documents, and (3) pay sanctions.		
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9	FACTS		
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11	One Corp. alleges Another Corp. breached the 2007 Agreement by providing subpar		
12	webhosting services. Another Corp. contends it met the contractual terms and industry standards.		
13	To prepare its defense, Another Corp. served its "Request for Production of Documents		
14	(Set One) Propounded by Defendant Another Corporation to Plaintiff One Corporation" (the		
15	Requests) on November 1, 2008. (Declaration of Humble Associate (Associate Decl.), ¶ 2 & Ex. A.)		
16	The ten individual requests addressed material facts underlying One Corp.'s claims and Another		
17	Corp.'s defenses. (Ibid.) One Corp.'s response was initially due on December 1, 2008. (Ibid.)		
18	At One Corp's requests, Another Corp. twice agreed to extend One Corp.'s deadline to		
19	respond to the Requests. (Associate Decl., $\P$ 3.) As a result, the deadline to respond to the Requests		
20	became February 5, 2009. (See id. & Ex. B.) But One Corp. failed to serve any response at all. (Id.,		
21	¶ 4.) Another Corp.'s counsel sent an email to One Corp.'s counsel on February 12, 2009, asking One		
22	Corp. to serve responses forthwith and without objections. (Id., $\P$ 5 & Ex. C.)		
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24	ANALYSIS		
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26	Discovery "expedite[s] and facilitate[s] both preparation and trial." (Greyhound Corp.		
27	v. Superior Court (1961) 56 Cal.2d 355, 376.) "One of the principal purposes of discovery [is] to do		
28	away 'with the sporting theory of litigation namely, surprise at trial."" (Ibid.)		
LAW OFFICES OF DEWEY, CHEATEM & 8 HOWE	5 57551\320994v1 2 DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS		

1	To avoid trial by ambush, the requesting party may move for an order compelling			
2	responses when a party fails to timely respond to requests for production of documents. (Cal. Code			
3	Civ. Proc., § 2031.300, subd. (b).) Moreover, "[t]he party to whom the inspection demand is directed			
4	waives any objection to the demand, including one based on privilege or on the protection for work			
5	product" (Cal. Code Civ. Proc., § 2031.300, subd. (a).) The requesting party need <i>not</i> try to			
6	resolve the matter informally before bringing a motion to compel when the responding party offers no			
7	response at all. (See Cal. Code Civ. Proc., § 2031.310, subd. (b)(2); see also Weil & Brown, Cal.			
8	Practice Guide: Civ. Proc. Before Trial, § 8:1486.) And the Court "shall" impose monetary sanctions			
9	against the losing party on a motion to compel unless the party acted "with substantial justification" or			
10	sanctions are "unjust." (Cal. Code Civ. Proc., § 2031.300, subd. (c).)			
11	One Corp. has failed to respond to the Requests at all. (Associate Decl., $\P$ 4.) It has no			
12	justification for its stonewalling. For Another Corp. to prepare fully for a fair trial, One Corp. must			
13	respond to the Requests without objections and produce all responsive documents. (See Cal. Code			
14	Civ. Proc. §, 2031.300, subds. (a), (b).) And One Corp. should pay sanctions of \$490 to compensate			
15	Another Corp. for its attorney fees and costs in connection with this motion. (Associate Decl., $\P$ 6.)			
16				
17	CONCLUSION			
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18 19	For all these reasons, Another Corp. respectfully requests the Court grant this Motion			
	For all these reasons, Another Corp. respectfully requests the Court grant this Motion and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests,			
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19 20	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests,			
19 20 21	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490.			
19 20 21 22	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490. Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP By:			
19 20 21 22 23	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490. Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP By: Humble Associate			
19 20 21 22 23 24	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490. Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP By:			
19 20 21 22 23 24 25	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490. Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP By: Humble Associate Attorneys for Defendant			
<ol> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	and enter an order compelling One Corp. to (1) serve responses, without objections, to the Requests, (2) produce all responsive documents, and (3) pay sanctions to Another Corp. in the amount of \$490. Dated: February 20, 2009 DEWEY, CHEATEM & HOWE LLP By: Humble Associate Attorneys for Defendant			

#### **DECLARATION OF HUMBLE ASSOCIATE**

I, Humble Associate, declare and state as follows:

I am an Associate in the law firm of Dewey, Cheatem & Howe LLP, counsel of
 record for Defendant Another Corporation (Another Corp.) in the above-captioned action. I am duly
 admitted to practice before all courts of the State of California. I am one of the attorneys responsible
 for representing Another Corp. in this action. I am familiar with the files and pleadings in this action
 and have personal knowledge of the facts stated herein. If called upon to do so, I could and would
 competently testify to the contents of this Declaration.

On November 1, 2008, Another Corp. served on Plaintiff One Corporation (One
 Corp.) its "Request for Production of Documents (Set One) Propounded by Defendant Another
 Corporation to Plaintiff One Corporation" (the Requests). The Requests contained ten individual
 document requests, each concerning material allegations underlying One Corp.'s claims and Another
 Corp.'s defenses. Based upon the service date, One Corp.'s response to the Requests was initially due
 on December 1, 2008. A true and correct copy of the Requests is attached hereto as Exhibit "A."

3. At One Corp.'s request, Another Corp. twice agreed to extend the deadline for
the City to respond to the Requests. As a result, the deadline for One Corp. to respond to the Requests
became February 5, 2009. A true and correct copy of a December 29, 2008 email from One Corp.'s
counsel confirming the February 5, 2009 deadline is attached hereto as Exhibit "B."

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4. To date, One Corp. has failed to serve any response to the Requests.

20 5. On February 12, 2009, I sent an email to One Corp.'s counsel demanding that
21 One Corp. serve responses to the Requests forthwith and without objections. A true and correct copy
22 of that email is attached hereto as Exhibit "C."

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6. I am a seven-plus-year licensed California attorney, specializing in business and real estate litigation. I have devoted more than one-half hour to drafting and conducting research for the Motion and accompanying materials. I anticipate spending another one hour reviewing and analyzing any opposition to the Motion, drafting a reply in support of the Motion, and preparing for and attending the hearing on the Motion. My normal billing rate for Another Corp. is \$300 per hour. Accordingly, the attorneys' fees incurred by Another Corp. in connection with the Motion will be in 57551/320996v1

1	excess of \$450 (one and one-half hours at \$300 per hour). In addition, Another Corp. will incur \$40 in
2	costs for filing fees in connection with this Motion. Total attorney fees and costs equal \$490.
3	I declare under penalty of perjury under the laws of the State of California that the
4	foregoing is true and correct, and that this Declaration was made this day of, 2008,
5	in Anytown, California.
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9	Humble Associate
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DEWEY, CHEATEM & 8 HOWE	8 2 DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS

1	DEWEY, CHEATHAM & HOWE LLP IMA PARTNER (STATE BAR NO. 100000)		
2	HUMBLE ASSOCIATE (STATE BAR NO. 1234 Main Street	200000)	
3	Anytown, California 90000 Telephone: (949) 321-1000		
4	Facsimile: (949) 321-1001 Email: ipartner@dch.com		
5	Email: hassociate@dch.com		
6	Attorneys for Defendant ANOTHER CORP.		
7	ANOTHER CORP.		
8	SUPERIOR C	OURT OF CA	LIFORNIA
9	COUNTY OF ORANG	E, CENTRAL	JUSTICE CENTER
10			
11	ONE CORPORATION, a California corporation,	Case No. 070	CC10000
12	- · · ·		all purposes to
13	Plaintiff,		Likai Seaum, Dept. C100
14	V.	DEFENDAN	0] ORDER GRANTING T ANOTHER CORPORATION'S
15	ANOTHER CORPORATION, a California corporation,	COMPEL R	MOTION AND MOTION TO ESPONSES AND PRODUCTION OF
16	Defendants.		<b>IS FROM PLAINTIFF ONE YON AND FOR SANCTIONS</b>
17		Date:	April 1, 2009
18		Time: Place:	9:30 a.m. Dept. C100
19		Action filed: Trial date:	January 13, 2008
20			September 29, 2009
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LAW OFFICES OF <b>DEWEY</b> ,	57551\321000v1		
CHEATEM & 8 HOWE		ED] ORDER GRA	ANTING EL RESPONSES AND DOCUMENTS

1	Defendant Another Corporation's (Another Corp.) Motion to Compel Responses and
2	Production of Documents from Plaintiff One Corporation (One Corp.) and for Sanctions came on
3	regularly for hearing on April 1, 2009, at 9:30 a.m., in Department C100 of the above-referenced
4	Court. The parties appeared as stated on the record.
5	The Court, having read and considered the papers in support of and in opposition to the
6	Motion and the pleadings and other papers on file herein, and having heard and considered the
7	arguments of counsel, and good cause appearing therefor, hereby ORDERS as follows:
8	The Motion is GRANTED.
9	1. One Corp. is hereby ORDERED to serve responses without objections to the
10	Request for Production of Documents (Set One) Propounded by Defendant Another Corporation to
11	Plaintiff One Corporation and to produce all responsive documents by, 2009; and
12	2. One Corp. is hereby ORDERED to pay a monetary sanction to Another Corp. in
13	the amount of \$ for attorney fees and costs it incurred in connection with this Motion.
14	IT IS SO ORDERED.
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16	Dated: By:
17	HONORABLE CALLUM LIKAI SEAUM SUPERIOR COURT JUDGE
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HOWE	DEFENDANT ANOTHER CORP.'S MOTION TO COMPEL RESPONSES AND DOCUMENTS

## BRIDGING THE GAP

# **CRIMINAL LAW**

### BRIDGING THE GAP Criminal Law

### February 5, 2011

### Panelists:

- Hon. Ronald P. Kreber, Judge, Orange County Superior Court
- Hon. Andre Manssourian, Judge, Orange County Superior Court
- Mr. Jeff Tatch, Attorney at Law
- I. A Criminal Defense Perspective: Jeff Tatch, Esq.
  - A. Professional background
  - B. Your first job
  - C. Setting up your practice
  - D. Marketing your practice and yourself
  - E. Retaining clients and getting "work"
  - F. A court case an overview misdemeanor vs. felonies
- II. A Prosecutor's Perspective: Judge Andre Manssourian
  - A. Overview
    - 1. Introduction
    - 2. Congratulations to the new attorneys and some advice
    - 3. My former position at the Orange County DA's Office
    - 4. Various units and functions of the OCDA
  - B. Role of a prosecutor in general
    - 1. Responsibilities/expectations of a prosecutor within the criminal justice system
    - 2. Qualities a prosecutor must have
  - C. Prosecutor as a Trial Attorney -
    - 1. Assets and skills a trial attorney must have
    - 2. Jury Selection
    - 3. Examination of witnesses
    - 4. Arguments
- III. A View From the Bench: Judge Ronald P. Kreber

## BRIDGING THE GAP

# ELDER LAW/ PROBATE

### Types of Cases Handled by the Probate Court

- Decedent's Estate/Probate of Will/Letters of Administration
- Estate (Trust Administration/Litigation)
- Special Needs Trust
- Guardianship
- Minor's Compromise
- Conservatorship
- LPS Conservatorship
- Elder Abuse Litigation (when Conservatorship is pending)
- Name Change
- Adoption
- Emancipation
- Termination of Parental Rights
- Riese Petition (Mental Health)
- Writ of Habeas Corpus

### Helpful Information for Elder Law, Trusts & Decedent's Estates

### Professional Organizations

- OCBA Trust and Estates Section (2nd Wednesday of month @ O.C.M.A./Turnip Rose, 300 South Flower Street, Orange, CA)
- OCBA Elder Law Section (2nd Friday of month @ O.C.M.A./Turnip Rose, 300 South Flower Street, Orange, CA)
- NAELA (Southern California section meets quarter annually) Brown Bag Meetings at Probate Department L73

### Resource Books

### Probate

- Probate Code
- California Practice Guide: Probate (The Rutter Group)
- California Trust and Probate Litigation (CEB)

### Trusts & Estates

- California Durable Powers of Attorney (CEB)
- California Trust Practice (CEB) by, Hartog & Dirkes
- Drafting California Revocable Trusts (CEB)

### Conservatorship/Guardianship

• California Conservatorship Practice (CEB-Continuing Education of the Bar-California)

### Public Benefits/Medi-Cal

• California Elder Law Resources, Benefits and Planning (CEB)

- California Guide to Tax, Estate & Financial Planning for the Elderly (LEXIS) by Zimring & Bashaw
- California Elder Law: An Advocate's Guide (CEB)

Other Codes, ect.

• Welfare and Institutions Code

### Other Helpful Resources

Judicial Council Forms Website: <u>www.courtinfo.ca.gov/forms/</u>

California Rules of Court: <u>www.courtinfo.ca.uov/rules/</u>

O.C. Probate Court's Local Rules: <u>www.occourts.org/directory/local-rules-of-court/</u>

# **Probate / Mental Health**



Hon. Mary Fingal Schulte, Supervising Judge Hon. Carly A. Lee Hon. Randall J. Sherman

### **Probate Case Types**

Fact of Birth, Death or Marriage Decedent's Estate ✓ Trusts Probate of Will Conservatorship Guardianship Minor's Compromise Name Change

### Mental Health Case Types

 Lanterman-Petris-Short Act (LPS) Conservatorship
 Riese Petition
 Writ of Habeas Corpus
 Weapons Petition

### Family Law Case Types

 ✓ Termination of Parental Rights
 ✓ Freedom from Parental Control and Custody
 ✓ Adoption
 ✓ Emancipation

## Unique Aspects of Probate / Mental Health

Judicial Officers

 Supervision Role, Non-adversarial Court

 Probate Examiners
 Probate Court Investigators
 No Paper Files, Paper-on-demand

### <u>Structure</u>

 4 Courtrooms
 Clerk's Office (2 filing windows)
 4 Judicial Officers: 3 Judges, 1 Assigned Judge
 3 Probate Attorneys (temporary judges)
 Kiese Hearing Officers

### Structure, Staff

1 Manager + 3 Supervisors + 35 staff

### Teams

 Courtroom Operations Supervisor: Clerk's Office and courtrooms (13 staff)
 Supervising Probate Examiner: examiners, order checkers, records (13 staff)
 Supervising Court Investigator: investigators and clerical (9 staff)



## PROBATE / MENTAL HEALTH RESOURCES

### On our Web Site

### <u>www.occourts.org</u>

- Forms, fees and other general information
- Cases on calendar
- Probate Notes related to cases on calendar
- Calendar Schedule
- Calendar / Hearing Information
  - Petition, Ex Parte, Mental Health, Motion, Mandatory Settlement Conference and Trial, Minor's Compromise, Name Change, Orders
- Searching Court Cases
- Viewing Register of Actions for individual cases
- Viewing Court Case Documents

## Some of Our Community Partners

Agencies:
 County Counsel
 Public Defender
 Public Guardian/Public Administrator
 District Attorney

Hospitals



### ACCESS TO/THE COURT

### Onsite at Lamoreaux Justice Center

Clerk's Office

 Kiosk access for searching and viewing cases

 Courtrooms

 Self Help Center
 Free Clinics

 Guardianship
 Conservatorship

### **By Phone**

Main Information for Lamoreaux Justice Center (automated menu): 657-622-5500 Clerk's Office (657-622-6501) ✓ Courtrooms <u>< L53 (657) 622-5553</u> ✓ L72 (657) 622-5572 ✓ L73 (657) 622-5573 ✓ L74 (657) 622-5574 Probate Investigators (657) 622-6538 Probate Order Checkers (657) 622-6052 Mon.-Fri. 11:00 am – 12:00 pm

### **By E-mail**

 Requests for Continuances ContinueProbate@occourts.org See Guidelines for e-mailing at www.occourts.org/probate/#continuances Questions Regarding Probate Notes ProbateCalendar@occourts.org See Guidelines for e-mailing at www.occourts.org/probate/#questions



### **QUESTION / ANSWER**

#### ORANGE COUNTY SUPERIOR COURT PROBATE / MENTAL HEALTH DEPARTMENT 341 THE CITY DRIVE, ORANGE, CALIFORNIA 92868

#### COURT INFORMATION

NAME		PHONE #	ASSIGNMENTS
		AREA CODE (714)	
-	<i>DEPT. L72</i> JUDGE MARJORIE LAIRD CARTER SUPERVISING JUDGE OF PROBATE CLERK MARY TORREZ	935-7274	PROBATE TRIALS, T.S.C., M.S.C., LAW & MOTION
-	<i>DEPT. L73</i> JUDGE GERALD G. JOHNSTON CLERK ROTATING	935-6050 EX PARTI	PROBATE CALENDARS & ES
-	<i>DEPT. L74</i> JUDGE GERALD G. JOHNSTON CLERK BEVERLY RITZ	935-6710	PROBATE TRIALS
-	<i>DEPT. L53</i> JUDGE RANDALL J. SHERMAN CALENDAR, CLERK JODI GAMBOA	935-7257	MENTAL HEALTH ADOPTIONS,
-	DEPT. L74 COMMISSIONER JULIAN CIMBALUK CLERK JODI GAMBOA		ADOPTIONS/ ABANDONMENTS, CONTESTED
-	PROBATE INFORATION AVAILABLE ONLINE AT V	WW.OCCOURTS.OR	<u>G</u>
	* <u>TO VIEW THE COURT'S CALENDARS BY DATE</u> : ( "CALENDARS," CLICK ON "CASES ON CALENI		OP DOWN MENU, SCROLL DOWN TO
	* <u>TO VIEW EXAMINER NOTES</u> : GO TO PROBATE I PROBATE NOTES ENTER CASE NUMBER THEN		SCROLL DOWN AND CLICK ON
	* <u>EX PARTE PROCEDURES:</u> GO TO PROBATE D PARTE PROCEDURES.	ROP DOWN MENU, S	CROLL DOWN AND CLICK ON EX
	<u>QUESTIONS REGARDING EXAMINER NOTES</u> : TO PLEASE FOLLOW THE EMAIL GUIDE		
•	<i>COURTROOM ASSISTANT</i> LUZ KORSGAARD CLERK ANSWERS QUESTIONS RELATING TO T	935-8056 HE COMPROMISE CA	LENDAR AND CITATIONS.
-	<i>CLERK'S OFFICE</i> THE OFFICE MAY ANSWER QUESTIONS REGAN RELATING TO PROBATE MATTERS. THEY ARE		
-	<i>ORDER CHECKER</i> LUZ KORSGAARD, RUTHIE VEYNA 935-8055 CLERK ANSWERS QUESTIONS RELATING TO T THE COURT.		- 12:00PM; MONFRI. DRDER AFTER IT HAS BEEN HEARD BY
PROBA	TE COURT SERVICES		
•	<i>PROBATE COURT SERVICES</i> THE OFFICE GIVES INFORMATION RELATING <sup>7</sup> INVESTIGATIONS.	935-6672 Fo guardianship A	AND CONSERVATORSHIP
-	<i>PROPOSED CONSERVATORSHIP ORIENTATION</i> ORIENTATION IS HELD EVERY TUESDAY (EXC FLOOR OF THE COURTHOUSE, ROOM 507.CONS		

Rev. O6-25-08(DR)

O:PROBATE/FORMS AND PROCEDURES/DEPT. L73/COURT INFORMATION

#### Professional Organizations

OCBA Trust and Estates Section (2<sup>nd</sup> Wednesday of month @ O.C.M.A./Turnip Rose, 300 South Flower St. Orange, CA)
OCBA Elder Law Section (2<sup>nd</sup> Friday of month @ O.C.M.A./Turnip Rose, 300 South Flower St. Orange, CA)
NAELA (Southern California section meets quarter annually)
Brown Bag Meetings at Probate Department (Dept. L-73) (quarter annually)

#### Resource Books

### Probate

Probate Code California Practice Guide: Probate (The Rutter Group) California Trust and Probate Litigation (CEB)

Trust & Estates

California Durable Powers of Attorney (CEB) California Trust Practice (CEB) by, Hartog & Dirkes Drafting California Revocable Trusts (CEB)

Conservatorship/Guardianship California Conservatorship Practice (CEB-Continuing Education of the Bar-Calif)

Public Benefits/Medi-Cal California Elder Law Resources, Benefits and Planning (CEB) California Guide to Tax, Estate & Financial Planning for the Elderly (LEXIS) by Zimring & Bashaw California Elder Law: An Advocate's Guide (CEB) Other Codes, etc. Welfare and Institutions Code

#### Other Helpful Resources

Probate Court's Calendar (*see* <u>www.occourts.org/probate/probatesched.asp</u>) Judicial Council Forms Website (*see* <u>www.courtinfo.ca.gov/forms/</u>) California Rules of Court (*see* <u>www.courtinfo.ca.gov/rules/</u>) O.C. Probate Court's Local Rules (see <u>www.occourts.org/home/ccrules/1ccrtabl.asp</u>)

### Probate Calendar Schedule to take effect 8/1/08

	Monday	Tuesday	Wednesday	Thursday	Friday
8:30	Jury Trials, Conservatorship Hearings		Conservatorship Hearings	Conservatorship Hearings	
9:00	Mental Health Court Trials & Rehearings, Orders to Show Cause		Mental Health Court Trials & Rehearings	Status Conferences & Rehearings	
11:00 a.m.					Adoption Order to Show Cause (OSC), Law & Motion
1:30 p.m.	Writs & Rieses, Medical Petitions, Firearm Petitions 1/3, Placement Reviews 2/4	HOPs, 6500s, 4800 Writs, Regional Center Client Hearings, Lanterman- Petris-Short (LPS) Hearings, Writs & Rieses		Writs & Rieses	Special Settings
1:45 p.m.			Adoptions		Adoption Overflow
2:00 p.m.					Facility Hearings

L72

		Tuesday	Wednesday	Thursday	Evidor
	Monday	Tuesday	Wednesday	Thursday	Friday
9:00 a.m.	Trials	Trials	Trials	Trials	Mandatory
					Settlement
					Conferences
					(MSC)
1:45 p.m.	Trial Setting			Law & Motion	Mandatory
_	Conferences (TSC)				Settlement
					Conferences
					(MSC)
• • •					
2:00 p.m.					Pretrials
2:30 p.m.	Status Conferences			Status Conferences	
-	& Orders to Show			& Orders to Show	
	Cause (OSC)			Cause (OSC)	

	Monday	Tuesday	Wednesday	Thursday	Friday
9:00 a.m.	Accounts &	Accounts &	Trust Accounts &	Accounts & Misc.	Minors
	Misc.	Misc.	Trusts Misc.		Compromise
10:30 a.m.	Ex Parte	Ex Parte	Ex Parte	Ex Parte	
11:00 a.m.	Sales of Real Property				
1:45 p.m.	Guardianship Appointments	Conservator Appointments	Public Guardian/ Public Adminstrator 1 <sup>st</sup> , 2 <sup>nd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> Wed. of each month Private Professiona 3 <sup>rd</sup> Wed. of mo.	New Petitions for Probate Spousal Prop Fact of Death Birth Marriage	Name Change
3:00 p.m.		Citations $-2^{nd}$ Tues. of mo.			

L74					
	Monday	Tuesday	Wednesday	Thursday	Friday
9:00 a.m.	Conservatorship Clinic – 1 <sup>st</sup> Monday of the month (except holidays)	Termination of Parental Rights	Hearings	Hearings	Mandatory Settlement Conferences (MSC)
11:00 a.m.				Contested Name Change (2 <sup>nd</sup> Thurs. of the mo.)	
1:30 p.m.	Guardianship Clinic – every Monday (except holidays)				Mandatory Settlement Conferences (MSC)

### **Probate Court**

### **Court Location**

Orange County Superior Court Lamoreaux Justice Center 341 The City Drive Orange, CA 92868

See <u>OC Superior Court Location Page</u> for more specific information on location.

### **Probate/Mental Health**

- Adoption
- Conservatorship
- Emancipation
- Estate
- Guardianship
- LPS Conservatorship
- Minor's Compromise
- Name Change
- Probate of Will
- Riese Petition
- Termination of Parental Rights
- Writ of Habeas Corpus

#### Probate Phone List

### **Email Guidelines for Probate Requests for Continuances**

Parties and attorneys may e-mail the court at <u>ContinueProbate@occourts.org</u> for all matters set on a calendar in Department L73 only. Your e-mail must contain the

following information:

- <u>SUBJECT LINE</u> IN HEADING MUST COMPLETED AS FOLLOWS: <u>HEARING DATE, TIME, DEPARTMENT, CASE NUMBER & NAME</u> (Example: 02-22-06, 9:00, L73, A123456, SMITH)
- FIRST LINE OF EMAIL MESSAGE: CASE NUMBER, CASE NAME, AND DESCRIPTION OF THE PLEADING ON CALENDAR
- **REASON FOR REQUEST**
- NO ATTACHMENTS

### CONTINUANCE QUALIFICATION GUIDELINES:

- ONLY matters scheduled in Department L73 will be considered. For matters scheduled in L72 and L53, contact those courtrooms directly.
- Requesting party is the petitioner, no prior continuance granted, no opposition may be continued once with no appearance required.
- Requesting party is not the petitioner, no prior continuance granted, no opposition continuance requires the agreement of the petitioner, which must be received via email in order to process the request via this email address.
- At prior hearing, parties or counsel have been ordered to return may be continued one time with an advisement that a bench warrant is issued and held pending the new date at which an appearance is required.
- There is an objector or multiple petitions and petitioners continuance requires the agreement of all, which must be received via email in order to process the request via this email address.
- Questions regarding probate notes see <u>Email Guidelines for Probate Notes</u>.
- Email that does not comply with the above may not be reviewed

<u>Please note</u>: This procedure is intended solely for the purpose of requesting a continuance on specific cases currently set for hearing in Department L73. The Probate Staff cannot dispense legal advice or direct you on procedural alternatives.

All correspondence will be addressed on a priority basis according to hearing date. We will make every effort to respond by 5 P.M. prior to the hearing date.

### **Email Guidelines for Probate Note Questions**

Parties and attorneys may e-mail the court at <u>ProbateCalendar@occourts.org</u> for all matters set on a calendar in Department L73. Your e-mail must contain the following information:

• <u>SUBJECT LINE</u> IN HEADING MUST COMPLETED AS FOLLOWS: <u>HEARING DATE, TIME, DEPARTMENT, CASE NUMBER & NAME</u> (Example: 02-22-06, 9:00, L73, A123456, SMITH)

- FIRST LINE OF EMAIL MESSAGE: CASE NUMBER, CASE NAME, AND DESCRIPTION OF THE PLEADING ON CALENDAR
- A REFERENCE TO THE EXAMINERS NOTES PERTAINING TO THE PETITION ON CALENDAR AND YOUR DETAILED QUESTION SPECIFIC TO THAT CALENDARED MATTER.
- NO ATTACHMENTS

Further, email inquiries shall conform to the following guidelines:

- One email message per calendar matter per hearing date
- Five lines as to each deficiency or issue
- If a continuance is requested, see <u>Email Guidelines for Probate Requests for</u> <u>Continuances</u>
- Email that does not comply with the above may not be reviewed

<u>**Please note</u>**: This procedure is intended <u>solely</u> for the purpose of answering questions regarding probate notes on the specific cases currently set for hearing in Department L73 or for clarifying language, codes sections, court rules and policies as they relate to your examiner notes.</u>

### This procedure <u>is not</u> for:

- Confirmation of documents received by the court
- Confirmation that documents have been reviewed

To view your notes go to <u>www.occourts.org/calendars/probatenotes.asp</u>. The Probate Staff cannot dispense legal advice or direct you on procedural alternatives.

All correspondence will be addressed on a priority basis according to hearing date. We will make every effort to respond within two court days.

#### Petition

Petitions are set for hearing at the time of filing and are not reserved ahead of time. See <u>Probate</u> <u>Filing Fees</u> for information regarding petition fees.

#### Ex Parte

Ex parte petitions where no notice is given must be delivered to the Probate Clerk's Office and left for court review and determination. All ex parte petitions where notice has been given must be delivered to the Probate Clerk's office no later than 2:00 p.m. the day before the hearing. See <u>Probate Calendar Schedule</u> for hearing dates, times, and department. See <u>Probate Filing Fees</u> for information regarding fees.

#### Mental Health

See Probate Calendar Schedule for hearing dates, times, and department

#### Motion

See <u>Probate Calendar Schedule</u> for information regarding days, times, and departments for motions. See <u>Probate Filing Fees</u> for information regarding fees.

#### **MSC and Trial**

MSC and trial dates are set by the court in the course of the action

#### **Minor's Compromise**

#### Minor's Comp Information Sheet

#### Name Change

Name Change Information Sheet

#### General

For general questions, call the Probate Attorney between 10:30 a.m. and 11:30 a.m., Monday through Thursday at (714) 935-8065.

#### Orders

For discussion of orders, call the Probate Order Checker between 11:00 a.m. and 12:00 noon, Monday through Friday, at (714) 935-6052.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		GC-21
	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE: BRANCH NAME:		
GUARDIANSHIP OF (Name):	······	
	MINOR	
PETITION FOR APPOINTMENT OF GUARDIAN OF M		CASE NUMBER:
Petitioner (name):		requests that
a. (Name and address):		(Telephone):
be appointed guardian of the PERSON of the minor and Letter	s issue upon qualificatior	1.
b. (Name and address):		(Telephone):
be appointed guardian of the ESTATE of the minor and Letter	s issue upon qualification	<b>1</b>
c the proposed guardian be appointed for several minors w	ho are brothers and sist	ers. The information requested in
nems 2-11 for each additional minor is supplied in Attach	ment 1c.	
d. (1) bond not be required because proposed gua for the reasons stated in Attachment 1d.	rdian is a corporate fiduc	iary or an exempt government agency
(2) \$ bond be fixed. It will be furnished b	y an authorized surety co	ompany or as otherwise provided by law.
(Specify reasons in Attachment 1d if the amount is di	ferent from minimum req	uniputify of us of inclusive provided by law. nuired by Prob. Code, § 8482.) be filed. (Specify institution and location):
<ul> <li>e. authorization be granted under Probate Code section 255</li> <li>f. orders relating to the powers and duties of the proposed goes be granted (specify orders, facts, and reasons in Attachm)</li> </ul>	Juardian of the person ur	ntly the powers specified in Attachment 14. nder Probate Code sections 2351-2358
<ul> <li>g. an order dispensing with notice to the persons named in A</li> <li>h. other orders be granted (specify in Attachment 1h).</li> </ul>	Attachment 15 be granted	d.
The minor is (name):		
(Present address and telephone):		ed L unmarried
	a. The person ha	iving legal custody of the minor is (name
Petitioner is	and address):	
a related to the minor as (specify):		
a minor 12 years of age or older.		
b) ther person on behalf of minor (specify): the proposed guardian is	b. [] (Complete only	if this person is one other than the per-
a nominee (affix nomination as Attachment 5).	son having leg	al custody.) The person having the care
<ul> <li>related to minor as (specify):</li> </ul>	of the minor is	(name and address):
c. c other (specify):		
he minor		
a. is is not a patient in or on leave of absence from of Mental Health or the State Department of Developmenta	a state institution under I Services (specify state	the jurisdiction of the State Department institution):
Administration (estimate amount of monthly benefit payable	ng or entitled to receive ): \$	benefits from the Veterans
		ired by Indian Child Welfare Act as
OT use this form for a temporary guardianship. (Continued on r		Attachment 7c.)
Adopted for Mandatory Use icial Council of Catifornia PETITION FOR APP 10 [Rev. January 1, 2001] CLLA BDIAN OF		Probate Code, § 1510
GUARDIAN OF	MINOR	

GUARDIANSHIP OF (Name):	CAS	SE NUMBER:
	NINOT	
<ol> <li>8. Petitioner has has no knowledge that</li> <li>9. Petitioner has has no knowledge that</li> <li>1. tions, custody, or other similar proceedings affecting the similar proceeding the sim</li></ol>	t there are any adoption, juvenile cou	ance benefits (specify in Attachment 8) urt, marriage dissolution, domestic rela
10. Petitioner, with intent to adopt, has accepted or inte	inds to accept physical care or custo	dy of the minor
11 A person other than the proposed guardian has bee	en 12. Character and estima	ted value of property of the estate:
nominated by will other nomination	Personal property:	\$
(nomination affixed as Attachment 11) (specify nam and address):	•	
	including real and perso wages, pensions, and p	
	wages, pensions, and p	Dublic benefits: \$ Total: \$
	Real property: \$	· · · · · · · · · · · · · · · · · · ·
13. Appointment of a guardian of the person	estate of the minor is necessary a	ind convenient for the reasons stated
in Attachment 13. Parental custody of the minor w	ould be detrimental for the reasons :	stated in Attachment 13.
14. Granting the proposed guardian of the estate power would be to the advantage and benefit and in the be in Attachment 14.	s to be exercised independently und st interest of the guardianship estate	er Probate Code section 2590 e. Powers and reasons are specified
15. Notice to the persons named in Attachment 15 shou	Id be dispensed with under Probate	Code section 1511
because they cannot with reasonable diligen	ce be given notice (specify names a	nd efforts to locate in Attachment 15)
the giving of notice would be contrary to the in	terest of justice (specify names and	reasons in Attachment 15)
<ol> <li>(Complete this section only for a petition, other than one for is not related to the minor.)</li> </ol>	or appointment of a guardian of the e	state only, filed by a person who
a Petitioner is the proposed guardian and will prom Code section 1543.	otly furnish all information requested	by any agency referred to in Probate
Petitioner is not the proposed guardian. A statem	ent by the proposed guardian that he	e or she will promotly furnish all
information requested by any agency referred to in	n Probate Code section 1543 is affix	ed as Attachment 16a.
b. The proposed guardian's home is is not	a licensed foster family home.	
c. The proposed guardian has never filed any petition	n for adoption of the minor exe	cept as specified in Attachment 16c.
17. Filed with this petition are the following (see Judicial		
Consent of Proposed Guardian	Waiver of Notice and C	
		nt of Temporary Guardian
Declaration Under Uniform Child Custody Juris		
<ol> <li>The names, residence addresses, and relationships of the the minor, so far as known to petitioner, are as follows:</li> </ol>	father, mother, spouse, brothers, sist	ters, grandparents, and children of
Relationship and name	Residence	address
a. Father:		
b. Mother:		
c. Grandparents:		
d.		· .
e List of names and addresses continued in Attachmo	aat 19	
<ol> <li>19. Number of pages attached:</li> </ol>		
Date:		
* (Signature of all petitioners also required (Prob. Code, § 1020).)	(SIGNATI	JRE OF ATTORNEY *)
I declare under penalty of perjury under the laws of the State of ( Date:	California that the foregoing is true a	nd correct.
	•	
(TYPE OR PRINT NAME)	(SIGNATU	RE OF PETITIONER)
	•	
(TYPE OR PRINT NAME)		RE OF PETITIONER)
GC-210 [Rev. January 1, 2001] PETITION FOR	APPOINTMENT OF AN OF MINOR	Page two
GUARDI		American LegalNet, Inc. www.USCourtForms.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	GC-21
	FOR COURT USE ONLY
-	
TELEPHONE NO.: FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
GUARDIANSHIP OF THE PERSON ESTATE OF (Name):	
CONSENT OF PROPOSED GUARDIAN	CASE NUMBER:
NOMINATION OF GUARDIAN	
CONSENT TO APPOINTMENT OF GUARDIAN AND WAIVER OF NOTICE	
CONSENT OF PROPOSED GUAR	RDIAN
I consent to serve as guardian of the person estate of the mir te:	nor.
(TYPE OR PRINT NAME)	(SIGNATURE OF PROPOSED GUARDIAN)
NOMINATION OF GUARDIAN	
I am a parent of the minor a donor of a gift to the minor. I no	
	similate (name and address).
as guardian of the person estate of the minor.	
I am a parent of the minor a donor of a gift to the minor. I no	minate (name and address):
as guardian of the person estate of the minor	
as guardian of the person estate of the minor.	· · · · · · · · · · · · · · · · · · ·
as guardian of the person estate of the minor. te:	
(TYPE OR PRINT NAME)	(SIGNATURE) physical custody until the child becomes
(TYPE OR PRINT NAME) DTICE: The guardian of the person of a minor child has full legal and an adult or is adopted, the court changes guardians, or the co Parents or other interested persons must petition the court to will not do so unless the judge decides that termination would CONSENT TO APPOINTMENT OF GUARDIAN AND consent to appointment of the guardian as requested in the Petition for Appointment	physical custody until the child becomes ourt terminates the guardianship. terminate the guardianship. The court d be in the child's best interest. WAIVER OF NOTICE ent of Guardian of Minor, filed on waive notice of hearing of the petition including
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### CONFIDENTIAL (DO NOT ATTACH TO PETITION)

GC-212	
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		TO FLITTON)	GC-2
ATTORNEY OR PARTY WITHOUT ATTORNE	Y (Name, State Bar number, and address):	FOR COURT USE ONLY	
TELEPHONE NO .:	FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, C			
STREET ADDRESS:	CONTY OF		
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:	· · · · · · · · · · · · · · · · · · ·		
GUARDIANSHIP OF		CASE NUMBER:	
(Name):			
	MINOR		
CONFIDENTIA Guardianship	L GUARDIAN SCREENING FORM of Person Estate	HEARING DATE AND TIME:	DEPT.
The proposed guardian guardian must submi	n must complete and sign this form. The per it the completed and signed form to the cour	t with the guardianship petition.	a
	This form must remain confidenti	al.	
	How This Form Will Be Used not be a part of the public file in this case. Each prop		
as guardian. The proposed guardian a. <b>Proposed guardian</b> (name). b. Date of birth:	:		
c. Social security number:	d. Driver's license number:	State:	
e. Telephone numbers: Home.	0110		
L Iam L Iam not	required to register as a sex offender under Califor (If you checked "I am," explain in Attachment 2.)	nia Penal Code section 290.	
I have I have not	been charged with, arrested for, or convicted of a c misdemeanor. (If you checked "I have," explain in (Check here if you have been arrested for dr	Attachment 3.)	
I have I have not	had a restraining order or protective order filed aga (If you checked "I have," explain in Attachment 4.)	inst me in the last 10 years.	
lam lam not	receiving services from a psychiatrist, psychologist, (If you checked "I am," explain in Attachment 5.)		
Do you, or does any other person	I living in your home, have a social worker or parole o (If you checked "Yes," explain in Attachment 6 and social worker, parole officer, or probation officer.)	r probation officer assigned to him or h provide the name and address of each	וer? ז
Have you, or has any other person neglect, or molestation?	n living in your home, been charged with, arrested for Yes No ( <i>If you checked "Yes," explain in A</i>	, or convicted of any form of child abus ttachment 7.)	se,
Iam Iam not	aware of any reports alleging any form of child abus agency charged with protecting children (e.g., Child enforcement agency regarding me or any other pers (If you checked "I am," explain in Attachment 8 and agency.)	Protective Services) or any other law on living in my home	
Have you, or has any other persor	n living in your home, habitually used any illegal subst	ances or abused alcohol?	
Yes No	(If you checked "Yes," explain in Attachment 9.)		
Adopted for Mandatory Use		Pa	ge 1 of 2
icial Council of California 212 [Rev. January 1, 2006]	CONFIDENTIAL GUARDIAN SCREENING FC (Probate—Guardianships and Conservatorship	Probate Codi Family Codi Cel. Rules of Court, ru SS) www.courtin	e,§3011; de 7.1001

### CONFIDENTIAL

	CONFIDENTIAL	GC
GUARDIANSHIP OF (Name):		CASE NUMBER:
	MINOR	
10. Have you, or has any other pers		1
	on living in your home, been charged with, arrested for,	or convicted of a crime involving
	(If you checked "Yes," explain in Attachment 10.)	
Yes No	n living in your home suffer from mental illness? (If you checked "Yes," explain in Attachment 11.)	
Yes No	disability that would impair your ability to perform the du (If you checked 'Yes," explain in Attachment 12.)	ties of guardian?
13. I have or may have	I do not have an adverse interest that the court n or to have an effect on, my ability to faithfully perform (If you checked "I have or may have," explain in Attac	the duties of guardian.
4. [] I have [] I have not	previously been appointed guardian, conservator, ex (If you checked "I have," explain in Attachment 14.)	ecutor, or fiduciary in another proceedir
5 I have I have not	been removed as guardian, conservator, executor, or (If you checked "I have," explain in Attachment 15.)	
6lamlam.not	a private professional guardian, as defined in Probate	Code section 2341.
7 Iam Iam not	Probate Code section 2342. (If you checked "I am" a currently registered with the Statewide Registry of Co maintained by the California Department of Justice un My current registration will expire on (date): (If you checked "I am not," explain why you are not re	nservators/Guardians/Trustees der Probate Code sections 2850–2855
lam 🛄 lam not	a responsible corporate officer authorized to act for (n.	ame of corporation):
I have I have not	guardian of the proposed ward under Probate Code se corporation's articles of incorporation specifically author guardian. (If you checked "I am," explain the circumst counseling of, or financial assistance to the proposed w filed for bankruptcy protection within the last 10 years.	rize it to accept appointments as an annual and a second appointments of the comporation's care of
	(If you checked "I have," explain in Attachment 19.)	
Minodowa	MINORS' CONTACT INFORMATION	
Minor's name: Home telephone:	School (name):	
•	School telephone:	Other telephone:
Minor's name: Home telephone:	School (name): School telephone:	Other telephone:
Minor's name:	School (name):	
Home telephone:	School telephone:	Other telephone:
Information on additional min	ors is attached.	
	DECLARATION	
clare under penalty of perjury under t	he laws of the State of California that the foregoing is tr	ue and correct.
9.		
		• •
(TYPE OR PRINT NAME OF PROPOSED	(SIGNATO	RE OF PROPOSED GUARDIAN)*
ch propopod quardian must fill aut an	d file a separate screening form.	
	i i i i i i i i i i i i i i i i i i i	

					FL-105/G	2-12
A TORNET OR PARTY WITHU	UT ATTORNEY (Name, State Bar number, an	d address):		FOR COURT	USE ONLY	
TELEPHONE NO .:	FAX NO.	(Optional):				
E-MAIL ADDRESS (Optional):						
ATTORNEY FOR (Name):						
SUPERIOR COURT O	OF CALIFORNIA, COUNTY OF					
STREET ADDRESS:						
MAILING ADDRESS						
CITY AND ZIP CODE:						
BRANCH NAME:						
PETITIONER:						
A LITTONER.						
RESPONDENT:						
DECLAR	ATION UNDER UNIFORM			CASE NUMBER:		
	CTION AND ENFORCEME					
						]
My present ac	oceeding to determine custody	or a child.				
children preser	dress is not disclosed. It is c atly residing with me as confide	onildential unde	er Family Code sect	ion 3429. I have listed	the address of	the
(Number):						
	on requested below. The resid	dence informat	ct to this proceeding	as follows:		
. Child's name		Place of birth	ion must be given t	Date of birth		
					Sex	1
eriod of residence	Address	<u></u>	Person child lived with	(name and present address)		
				(name and present address)	Relationship	
to present	Confidential					
1				· · · · · · · · · · · · · · · · · · ·		
to						

to					
to					
					·····
to					
b. Child's name		Place of birth	<u> </u>	Date of birth	Sex
Residence information is (If NOT the same, provid	the same as given above for child a. Ie the information below.)				
Period of residence	Address		Person child lived with	(name and present address)	Relationship
to present	Confidential				
				······································	
to					
	· ·				
to					
to					
Additional childre	en are listed on Attachment 3c.	(Provide all roa	wonted information	for a delition to the terms	

a 3c. (Provide all requested information for additional children.)

Form Approved for Optional Use Judicial Council of California FL-105/GC-120 (Rev. July 1, 2006)

DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

SHORT TITLE:		CASE NUMBER:
cisetinere, concerning custouy of a chill	witness or in some other capacity in another d subject to this proceeding? the following information):	litigation or custody proceeding, in California c
e. Hume of each child.		
b. I was a: 🛄 party 🛄 witness	other (specify):	
c. Court (specify name, state, location):		
d. Court order or judgment (date):		
<ul> <li>5. Do you have information about a custod other than that stated in item 4?</li> <li>No Yes (If yes, provide the state)</li> </ul>		any other court concerning a child in this case,
a. Name of each child:		
b. Nature of proceeding: dissolut	ion or divorce guardianship	adoption other (specify):
<ul> <li>c. Court (specify name, state, location):</li> <li>d. Status of proceeding;</li> </ul>		
The orders are from the following ca	training /protective orders are now in effect. ( Durt or courts ( <i>specify county and state</i> ):	Attach a copy of the orders if you have one.)
a. Criminal: County/state:	C. Juvenile C	ounty/state:
Case No. ( <i>if known</i> ): b Family: County/state:	Case No. (i	f known):
b Family: County/state: Case No. ( <i>if known</i> ):		ty/state:
đ		f known):
7. Do you know of any person who is not a p	arty to this proceeding who has physical cus	tody or claims to have
custody of or visitation rights with any child	d in this case?	
No Yes (If yes, provide the		
a. Name and address of person	b. Name and address of person	c. Name and address of person
Has physical custody		
Claims custody rights	Has physical custody Claims custody rights	Has physical custody
Claims visitation rights	Claims visitation rights	Claims custody rights
Name of each child	Name of each child	
		Name of each child
declare under penalty of perjury under the law	s of the State of California that the foregoing	is true and correct.
Pate:		
(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
Number of pages attached after this p	age:	
NOTICE TO DECLARANT: You have a com proceeding in a	tinuing duty to inform this court if you obt California court or any other court conce	tain any information about a custody rning a child subject to this proceeding.
	ATION UNDER UNIFORM CHILD CUS	
	CTION AND ENFORCEMENT ACT (UC	TODY Page 2 of 2 CJEA)
305	·	

SHORT TITLE:

	GC-24		
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: FAX NO. (Optional);			
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS:	***************************************		
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			
GUARDIANSHIP OF THE PERSON ESTATE			
OF (Name):	MINOR		
DUTIES OF GUARDIAN and Acknowledgment of Receipt		CASE NUMBER:	

#### **DUTIES OF GUARDIAN**

When you are appointed by the court as a guardian of a minor, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you about these matters. You should clearly understand the information on this form. You will find additional information in the *Guardianship Pamphlet (for Guardianships of Children in the Probate Court)* (Form GC-205), which is available from the court.

#### 1. GUARDIANSHIP OF THE PERSON

If the probate court appoints you as a *guardian of the person* for a child, you will be required to assume important duties and obligations.

- a. Fundamental responsibilities The guardian of the person of a child has the care, custody, and control of the child. As guardian, you are responsible for providing for food, clothing, shelter, education, and all the medical and dental needs of the child. You must provide for the safety, protection, and physical and emotional growth of the child.
- **b. Custody** As guardian of the person of the child, you have full legal and physical custody of the child and are responsible for **all** decisions relating to the child. The child's parents can no longer make decisions for the child while there is a guardianship. The parents' rights are suspended—not terminated—as long as a guardian is appointed for a minor.
- c. Education As guardian of the person of the child, you are responsible for the child's education. You determine where the child should attend school. As the child's advocate within the school system, you should attend conferences and play an active role in the child's education. For younger children, you may want to consider enrolling the child in Head Start or other similar programs. For older children, you should consider their future educational needs such as college or a specialized school. You must assist the child in obtaining services if the child has special educational needs. You should help the child in setting and attaining his or her educational goals.
- d. Residence As guardian, you have the right to determine where the child lives. The child will normally live with you, but when it is necessary, you are allowed to make other arrangements if it is in the best interest of the child. You should obtain court approval before placing the child back with his or her parents.

As guardian, you **do not** have the right to change the child's residence to a place outside of California unless you first receive the court's permission. If the court grants permission, California law requires that you establish legal guardianship in the state where the child will be living. Individual states have different rules regarding guardianships. You should seek additional information about guardianships in the state where you want the child to live.

Form Adopted for Mandatory Use Judicial Council of California GC-248 [New January 1, 2001] (Continued on reverse)

DUTIES OF GUARDIAN (Probate)

			GC-248
GUARDIAN OF (Name):		CASE NUMBER:	
	MINOR		

- e. Medical treatment As guardian, you are responsible for meeting the medical needs of the child. In most cases, you have the authority to consent to the child's medical treatment. However, if the child is 14 years or older, surgery may not be performed on the child unless either (1) both the child and the guardian consent or (2) a court order is obtained that specifically authorizes the surgery. This holds true except in emergencies. A guardian may not place a child involuntarily in a mental health treatment facility under a probate guardianship. A mental health conservatorship proceeding is required for such an involuntary commitment. However, the guardian may secure counseling and other necessary mental health services for the child. The law also allows older and more mature children to consent to their own treatment in certain situations such as outpatient mental health treatment, medical care related to pregnancy or sexually transmitted diseases, and drug and alcohol treatment.
- f. **Community resources** There are agencies in each county that may be helpful in meeting the specific needs of children who come from conflicted, troubled, or deprived environments. If the child has special needs, you must strive to meet those needs or secure appropriate services.
- **g. Financial support** Even when the child has a guardian, the parents are still obligated to financially support the child. The guardian may take action to obtain child support. The child may also be eligible for Temporary Aid for Needy Families, TANF (formerly known as AFDC), social security benefits, Veterans Administration benefits, Indian child welfare benefits, and other public or private funds.
- h. Visitation The court may require that you allow visitation or contact between the child and his or her parents. The child's needs often require that the parent-child relationship be maintained, within reason. However, the court may place restrictions on the visits, such as the requirement of supervision. The court may also impose other conditions in the child's best interest.
- i. **Driver's license** As guardian of the person, you have the authority to consent to the minor's application for a driver's license. If you consent, you will become liable for any civil damages that may result if the minor causes an accident. The law requires that anyone signing the DMV application obtain insurance to cover the minor.
- **j.** Enlistment in the armed services The guardian may consent to a minor's enlistment in the armed services. If the minor enters into active duty with the armed forces, the minor becomes emancipated under California law.
- **k. Marriage** For the minor to marry, the guardian **and the court** must give permission. If the minor enters a valid marriage, the minor becomes emancipated under California law.
- I. Change of address A guardian must notify the court in writing of any change in the address of either the child or the guardian. This includes any changes that result from the child's leaving the guardian's home or returning to the parent's home. You **must** always obtain **court permission** before you move the child to another state or country.
- m. Court visitors and status reports Some counties have a program in which "court visitors" track and review guardianships. If your county has such a program, you will be expected to cooperate with all requests of the court visitor. As guardian, you may also be required to fill out and file status reports. In all counties, you must cooperate with the court and court investigators.
- n. Misconduct of the child A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused by the use of a firearm. If you are concerned about your possible liability, you should consult an attorney.
- o. Additional responsibilities The court may place other conditions on the guardianship or additional duties upon you, as guardian. For example, the court may require the guardian to complete counseling or parenting classes, to obtain specific services for the child, or to follow a scheduled visitation plan between the child and the child's parents or relatives. As guardian, you must follow all court orders.

(Continued on page three)

GUARDIAN OF (Name):		(	GC-248
OCARDIAN OF (Name).		CASE NUMBER:	
	MINOR	· · · · · · · · · · · · · · · · · · ·	

p. Termination of guardianship of the person - A guardianship of the person automatically ends when the child reaches the age of 18, is adopted, marries, is emancipated by court order, enters into active military duty, or dies. If none of these events has occurred, the child, a parent, or the guardian may petition the court for termination of guardianship. But it must be shown that the guardianship is no longer necessary or that termination of the guardianship is in the child's best interest.

#### 2. GUARDIANSHIP OF THE ESTATE

If the court appoints you as *guardian of the child's estate*, you will have additional duties and obligations. The money and other assets of the child are called the child's "estate." Appointment as guardian of a child's estate is taken very seriously by the court. The guardian of the estate is required to manage the child's funds, collect and make an inventory of the assets, keep accurate financial records, and regularly file financial accountings with the court.

#### MANAGING THE ESTATE

- a. Prudent investments As guardian of the estate, you must manage the child's assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make speculative or risky investments.
- b. Keeping estate assets separate As guardian of the estate, you must keep the money and property of the child's estate separate from everyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is a *guardianship* account and not your personal account. You should use the child's social security number when opening estate accounts. You should never deposit estate funds in your personal account or otherwise mix them with your own funds or anyone else's funds, even for brief periods. Securities in the estate must be held in a name that shows that they are estate property and not your personal property.
- c. Interest-bearing accounts and other investments Except for checking accounts intended for ordinary expenses, you should place estate funds in interest-bearing accounts. You may deposit estate funds in insured accounts in federally insured financial institutions, but you should not put more than \$100,000 in any single institution. You should consult with an attorney before making other kinds of investments.
- d. Blocked accounts A blocked account is an account with a financial institution in which money is placed. No person may withdraw funds from a blocked account without the court's permission. Depending on the amount and character of the child's property, the guardian may elect or the court may require that estate assets be placed in a blocked account. As guardian of the estate, you must follow the directions of the court and the procedures required to deposit funds in this type of account. The use of a blocked account is a safeguard and may save the estate the cost of a bond.
- e. Other restrictions As guardian of the estate, you will have many other restrictions on your authority to deal with estate assets. Without prior court order, you may not pay fees to yourself or your attorney. You may not make a gift of estate assets to anyone. You may not borrow money from the estate. As guardian, you may not use estate funds to purchase real property without a prior court order. If you do not obtain the court's permission to spend estate funds, you may be compelled to reimburse the estate from your own personal funds and may be removed as guardian. You should consult with an attorney concerning the legal requirements relating to sales, leases, mortgages, and investment of estate property. If the child of whose estate you are the guardian has a living parent or if that child receives assets or is entitled to support from another source, you must obtain court approval before using guardianship assets for the child's support, maintenance, or education. You must file a petition or include a request for approval in the original petition, and set forth which exceptional circumstances justify any use of guardianship assets for the child's support. The court will ordinarily grant such a petition for only a limited period of time, usually not to exceed one year, and only for specific and limited purposes.

#### INVENTORY OF ESTATE PROPERTY

f. Locate the estate's property - As guardian of the estate, you must locate, take possession of, and protect the child's income and assets that will be administered in the estate. You must change the ownership of all assets into the guardianship estate's name. For real estate, you should record a copy of your Letters of Guardianship with the county recorder in each county where the child owns real property.

GC-248 [New January 1, 2001 ]

GUARDIAN OF (Name):	·····	CASE NUMBER:	
	MINOR		

- g. Determine the value of the property As guardian of the estate, you must arrange to have a court-appointed referee determine the value of the estate property unless the appointment is waived by the court. You—not the referee—must determine the value of certain "cash items." An attorney can advise you about how to do this.
- h. File an inventory and appraisal As guardian of the estate, you must file an inventory and appraisal within 90 days after your appointment. You may be required to return to court 90 days after your appointment as guardian of the estate to ensure that you have properly filed the inventory and appraisal.

#### INSURANCE

i. Insurance coverage - As guardian of the estate, you should make sure that there is appropriate and sufficient insurance covering the assets and risks of the estate. You should maintain the insurance in force throughout the entire period of the guardianship or until the insured asset is sold.

#### RECORD KEEPING AND ACCOUNTING

- j. Records As guardian of the estate, you must keep complete, accurate records of each financial transaction affecting the estate. The checkbook for the guardianship checking account is essential for keeping records of you will have to prepare an accounting of all money and property that you have received, what you have spent, the date of each transaction, and its purpose. You will also have to be able to describe in detail what is left after you have paid the estate's expenses.
- k. Accountings As guardian of the estate, you must file a petition requesting that the court review and approve your accounting one year after your appointment and at least every two years after that. The court may ask that you justify some or all expenditures. You should have receipts and other documents available for the court's review, if requested. If you do not file your accounting as required, the court will order you to do so. You may be removed as guardian for failure to file an accounting.
- I. Format As guardian of the estate, you must comply with all state and local rules when filing your accounting. A particular format is specified in the Probate Code, which you must follow when you present your account to the court. You should check local rules for any special local requirements.
- m. Legal advice An attorney can advise you and help you prepare your inventories, accountings, and petitions to the court. If you have questions, you should consult with an attorney.

## 3. OTHER GENERAL INFORMATION

- a. Removal of a guardian A guardian may be removed for specific reasons or when it is in the child's best interest. A guardian may be removed either on the court's own motion or by a petition filed by the child, a relative of the child, or any other interested person. If necessary, the court may appoint a successor guardian, or the court may return the child to a parent if that is found to be in the child's best interest.
- b. Legal documents For your appointment as guardian to be valid, the Order Appointing Guardian of Minor must be signed. Once the court signs the order, the guardian must go to the clerk's office, where Letters of Guardianship will be issued. Letters of Guardianship is a legal document that provides proof that you have been appointed and are serving as the guardian of a minor. You should obtain several certified copies of the Letters from the clerk. These legal documents will be of assistance to you in the performance of your duties, such as enrolling the child in school, obtaining medical care, and taking care of estate business.
- c. Attorneys and legal resources If you have an attorney, the attorney will advise you on your duties and responsibilities, the limits of your authority, the rights of the child, and your dealings with the court. If you have legal questions, you should consult with your attorney. Please remember that the court staff cannot give you legal advice.

GC-248 [New January 1, 2001 ]

	CASE NUMBER:
MINOR	
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#### GC-020

ATTODUCK OD DU DOWN		GC-04
ATTURNEY OR PARTY WITHOU	UT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
-		
TELEPHONE NO .:	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF C	CALIFORNIA, COUNTY OF	
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
GUARDIANSHIP	CONSERVATORSHIP OF THE PERSON C ES	STATE
OF (Name):		
		VATEE
		CASE NUMBER:
NOTICE OF	HEARING-GUARDIANSHIP OR CONSERVATORSHIP	
	This notice is required by law.	
This not	ice does not require you to appear in court, but you may atten	nd the hearing if you wish
		ie nie neuring ir you wish.
NOTICE is given that	(name):	
(representative capac		
has filed (specify);		
nas neu (specny).		
in the proceeding or ap	udes an application for the independent exercise of powers by a g	confidential documents if you file papers
Probate (	Code section 2108 Probate Code section 2590.	
Powers requeste	ed are specified below specified in Attachment	3.
	•	
A HEARING on the met	tor will be held as fallows.	
A HEARING on the mat	tter will be held as follows:	
A HEARING on the mat		
_	tter will be held as follows: Time: Dept.:	Room:
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a. Date: b. Address of court [	Time: Dept.: Dept.: is (specify):	
<ul> <li>a. Date:</li> <li>b. Address of court [</li> <li>Assistive listening system available upon request if</li> </ul>	Time: Dept.: same as noted above is (specify): ms, computer-assisted real-time captioning, or sign language interp f at least 5 days notice is provided. Contact the clerk's office for <i>Pa</i>	preter services are
a. Date: b. Address of court [ Assistive listening system available upon request if	Time: Dept.: same as noted above is (specify): ms, computer-assisted real-time captioning, or sign language interp f at least 5 days notice is provided. Contact the clerk's office for <i>Pa</i>	preter services are
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a. Date: b. Address of court [ Assistive listening system available upon request if	Time: Dept.: same as noted above is (specify): ms, computer-assisted real-time captioning, or sign language interp f at least 5 days notice is provided. Contact the clerk's office for <i>Pa</i>	preter services are equest for on 54.8.)
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a. Date: b. Address of court [ Assistive listening system available upon request if Accommodations by Per	Time: Dept.: same as noted above is (specify): ms, computer-assisted real-time captioning, or sign language interp f at least 5 days notice is provided. Contact the clerk's office for Re rsons with Disabilities and Order (form MC-410). (Civil Code section	preter services are equest for on 54.8.) Page 1 of 2 Probate Code. §§ 1254.
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a. Date: b. Address of court [ Assistive listening system available upon request if Accommodations by Per	Time: Dept.: same as noted above is (specify): ms, computer-assisted real-time captioning, or sign language interp f at least 5 days notice is provided. Contact the clerk's office for Re rsons with Disabilities and Order (form MC-410). (Civil Code section NOTICE OF HEARING-GUARDIANSHIP OR CONSERVA	preter services are equest for on 54.8.) Page 1 of 2 Probate Code. §§ 1264, 1480–1469, 1511, 1822 www.courlinfo.ca.gov

GUARDIANSHIP CONSERVATI	ORSHIP OF THE	PERSON EST	ATE CASE NUMBER:	
		(PROPOSED) CONSERV	ATEE	
		OTE: *	L	
A copy of this Notice of Hearing—Guard has the right under the law to be notified Copies of this Notice may be served by m personally served on certain persons; and guardianships and conservatorships. The <b>either service by mail or personal serv</b> allows. The petitioner does this by arrang which the petitioner then files with the orig This page contains a proof of service that performs the service must complete and s attached to this Notice when it is filed with	dianship or Conservator, of the date, time, place, nail in most situations. If d copies of this Notice me e petitioner (the person ice, but must show the ping for someone else to pinal Notice. at may be used only to s sign a proof of personal the court. You may us	ship ("Notice") must b and purpose of a cou- n a guardianship, how hay be personally ser who requested the co court that copies of the perform the service how service by mail. service, and each sig se form GC-020(P) to	In thearing in a guard wever, copies of this ved instead of served ourt hearing) <b>may no</b> is Notice have been and complete and sig To show personal served show personal served	lianship or conservatorship. Notice must sometimes be d by mail in both <b>t personally perform</b> served in a way the law gn a proof of service, ervice, each person who of of service must be ce of this Notice.
<ul> <li>(This Note replaces the clerk's certificate form GC-020(C), Clerk's Certificate of Po- certificate</li> </ul>	of posting on prior vers	sions of this form. If r —Guardianship or Co	notice by posting is d conservatorship. (See	esired, attach a copy of Prob. Code, § 2543(c).)
	PROOF OF SE	RVICE BY MAIL		· · · · ·
<ol> <li>I am over the age of 18 and not a party</li> <li>My residence or business address is (s)</li> </ol>	to this cause. I am a re	sident of or employed	l in the county where	the mailing occurred.
<ul> <li>a depositing the sealed envelowith the postage fully prepaid with the postage fully prepaid b placing the envelope for coll business practices. I am read for mailing. On the same day ordinary course of business v</li> <li>4. a. Date mailed:</li> <li>5 I served with the Notice of Hearin the Notice.</li> </ul>	lection and mailing on the dily familiar with this bus y that correspondence is with the United States P b. Place mailed gGuardianship or Col	ne date and at the pla siness's practice for co s placed for collection ostal Service in a sea (city, state): nservatorship a copy	ce shown in item 4 fo ollecting and process and mailing, it is de led envelope with po of the petition or othe	ollowing our ordinary sing correspondence posited in the ostage fully prepaid. er document referred to in
declare under penalty of perjury under the la Date:	aws of the State of Calif	ornia that the foregoi	ng is true and correc	t.
(TYPE OR PRINT NAME OF PERSON COMPLETING			JRE OF PERSON COMPLETI	NG THIS FORM)
NAME AND ADD	RESS OF EACH PERS	ON TO WHOM NOTI	CE WAS MAILED	
Name of person served	Adc	lress (number, street,	city, state, and zip c	ode)
	1			
Continued on an attachment. (You r	nay use form DE-120(N	1A)/GC-020(MA) to st	now additional persor	ns served.)

GC-020 [Rev. July 1, 2005]

NOTICE OF HEARING—GUARDIANSHIP OR CONSERVATORSHIP (Probate—Guardianships and Conservatorships)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	TELEPHONE AND FAX NOS .:	GC FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
GUARDIANSHIP OF (Name):		
	MINOR	
LETTERS OF GUARDIANSHIP		CASE NUMBER:
Person Estate		
LETTERS		AFEIDMATION
(Name):		AFFIRMATION
is appointed guardian of the person estate	solemnly affirm #	hat I will perform the duty of
of (name):	according to law:	nat I will perform the duties of guard
owner powers have been granted and conditions have		
a. Powers to be exercised independently under	Evented	
Probate Code section 2590 as specified in	Executed on (date):	
Attachment 2a (specify powers, restrictions,	at (place):	
conditions, and limitations).		
b Conditions relating to the care and custody of		
the property under Probate Code section 2402 as specified in Attachment 2b.		
c. Conditions relating to the care, treatment,		(SIGNATURE OF APPOINTEE)
education, and welfare of the minor under		
Probate Code section 2358 as specified in		
Attachment 2c.		
d. L Other (specify in Attachment 2d).		CERTIFICATION
The guardian is not authorized to take possession of	Certify that this day	· · · · · · · · · · · · · · · · · · ·
money or any other property without a specific court order.	CODV of the original o	ment and any attachments is a corre
	issued to the person a	in file in my office, and that the Letter appointed above have not been revoked
lumber of pages attached:	annulled, or set aside	and are still in full force and effect.
IESS, clerk of the court, with seal of the court affixed.	WITNESS, clerk of the	court, with seal of the court affixed.
		when both of the court allixed.
Data	(0541)	
Date:	(SEAL)	Date:
Clerk, by		Clerk, by
		Cicit, by
(DEPUTY)		
		(DEPUTY)
Approved by the LETTERS OF GUA		

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		GC-24
(Warne, state bar humber, and address):	TELEPHONE AND FAX NOS.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS: MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
GUARDIANSHIP OF THE PERSON ESTATE	OF (Name):	
	MINOR	
	MINOR	CARE N. 1920
ORDER APPOINTING GUARDIAN OF MINOF		CASE NUMBER:
WARNING: THIS APPOINTMENT IS NOT E	FFECTIVE UNTIL L	ETTERS HAVE ISSUED
. The petition for appointment of guardian came on for hearing as fo	ollows (check boxes c, d, a	and e to indicate personal presence):
a. Judge (name):		
b. Hearing date: Time:		·
	L Dept	t.: Room:
c Petitioner (name):		
d. Attorney for Petitioner (name):		
e. Attorney for minor (name, address, and telephone):		
1		
E COURT FINDS		
a. All notices required by law have been given.		
h h h h h h h h h h h h h h h h h h h		
b. L Notice of hearing to the following persons L has be	een L should be d	lispensed with <i>(names)</i> :
Appointment of a guardian of the person esta	ate of the minor is need	
	ate of the minor is neces	ssary and convenient.
Granting the guardian powers to be exercised independently and is in the best interest of the guardianship estate.	under Probate Code secti	ion 2590 is to the advantage and benefit
Atterney (neme)		
Attorney (name):	has bee	en appointed by the court as legal
counsel to represent the minor in these proceedings. The cos	at for representation is: \$	-
The appointed court investigator, probation officer, or demont	and the second second	
The appointed court investigator, probation officer, or domesti	c relations investigator is (	name, title, address, and telephone):
COURT ORDERS		
(Name):		
(Address):	C	Telephone):
is appointed quardian of the DEBCON of the set	ν.	
is appointed guardian of the PERSON of (name): and Letters shall issue upon qualification.		
and Letters shall issue upon qualification.		
T use this form for a temporary guardianship. (Continued on r	everse)	
m Approved by the ODDED ADDOINTING OUT		
iel Council of California ORDER APPOINTING GUA D [Rev. January 1, 1998]	RUIAN OF MINOR	Probate Code, §§ 1514, 2310
		American LegalNet, Inc.
314		www.USCourtForms.com

<ol> <li>The guardian of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in Attachment 11</li></ol>	Specified in Attachment 11  Subject to the conditions provided.  Orders are granted relating to the powers and duties of the guardian of the person under Probate Code sections 2351-2358 as specified in Attachment 12.  Orders are granted relating to the conditions imposed under Probate Code section 2402 upon the guardian of the estate as specified in Attachment 13.  Other orders as specified in Attachment 14 are granted.  The probate referee appointed is (name and address):  Number of boxes checked in items 8-15:  Number of pages attached:	
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JUDGE OF THE SUPERIOR COURT	JUDGE OF THE SUPERIOR COURT	
SIGNATURE FOLLOWS LAST ATTACHMENT ORDER APPOINTING GUARDIAN OF MINOR Page two		JUDGE OF THE SUPERIOR COURT
<b>e</b> :	e:	

•

ATTORNEY OR PARTY MATHOUT ATTORNEY (IN		GC-25
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Slate Bar number, and address):	FOR COURT USE ONL	Y
TELEPHONE NO.: FAX NO. (Optional):		
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS: CITY AND ZIP CODE:		
BRANCH NAME:		
	CASE NUMBER:	
Name);	·· <b>····</b>	
MINOR		
PETITION FOR TERMINATION OF GUARDIANSHIP	HEARING DATE AND TIME:	DEPT.:
Petitioner (name):	regu	ests that
a the guardianship of the PERSON of (minor):		erminated.
b the guardianship of the ESTATE of (minor):	be to	erminated
<ul> <li>(1) The estate has been entirely exhausted through expenditures o</li> <li>(2) The estate falls within the provisions of Probate Code section 20 have been required.</li> </ul>	r disbursements (Probate Code, § 528(b) (small estate), and no acco	2626). punts
(3) Other (specify):		
Petitioner is the minor minor's guardian minor's parent.		
(Name):	was appointed guardian of the	DEPRON
of the minor named in item 1a on <i>(date):</i>	web appointed guardian of the	PERSON
(Name):	tion oppointed successive state	
of the minor named in item 1b on (date):	was appointed guardian of the	ESTATE
It is in the best interest of the minor that the guardianship of the person	estate be terminated for the re	25005
stated in Attachment 5 stated below (specify):		450115
A request for special notice		
a has not been filed.		
b. has been filed and notice will be given to (names):		
Notice to the persons identified in Attachment 7 should be dispensed with because	<b>.</b>	
a they cannot with reasonable diligence be given notice (specify names a	nd efforts to locate in Attachment	7}
b other good cause exists to dispense with notice (specify names and real	sons in Attachment 7).	· /·
Petitioner is the minor's guardian. Petitioner requests reasonable visitation with the	a minor offer termination of the	
guardianship as specified in Attachment 8. A completed Declaration Under Unifor Enforcement Act (UCCJEA) (form FL-105/GC-120) is also attached.	m Child Custody Jurisdiction and	
CE: This guardianship will terminate automatically when the child reaches age	8. No petition or court order is	•
necessary to terminate the guardianship at that time. Nevertheless, if this is termination of the guardianship does not eliminate the requirement that a fi (See Prob. Code, § 1600.)	a quardianshin of the cetato	
		Page 1 of 2
Adopted for Mandatory Use         PETITION FOR TERMINATION OF GUARDIANS           cial Councit of California         (ProbateGuardianships and Conservatorships           55 (Rev. January 1, 2006)         (ProbateGuardianships and Conservatorships	1601, 2626	ode §§ 1460, , 2627, 2636 Intinfo.ca.gov
	American Loss	

GUARDIANSHIP OF THE PERSON ESTATE	GC
GUARDIANSHIP OF THE PERSON ESTATE(Name):	OF CASE NUMBER:
	MINOR
<ol> <li>The names and residence addresses of the guardian, minor</li> <li>a. Guardian:</li> </ol>	and minor's parents, brothers, sisters, and grandparents are (speci g. Brother or sister:
b. Minor:	h. Maternal grandfather:
c. Father:	i. Maternal grandmother:
d. Mother:	j. Paternal grandfather:
e. Brother or sister:	k. Paternal grandmother:
f. Brother or sister:	I. Additional names and addresses continued on Attachment 9.
). Number of pages attached:	
,	N
ate:	
Signature of all petitioners also required (Prob. Code, § 1020).) leclare under penalty of perjury under the laws of the State of Ca	(SIGNATURE OF ATTORNEY OR PETITIONER WITHOUT AN ATTORNEY *)
ate: Signature of all petitioners also required (Prob. Code, § 1020).) leclare under penalty of perjury under the laws of the State of Ca ate:	lifornia that the foregoing is true and correct.
Signature of all petitioners also required (Prob. Code, § 1020).) eclare under penalty of perjury under the laws of the State of Ca	
Signature of all petitioners also required (Prob. Code, § 1020).) eclare under penalty of perjury under the laws of the State of Ca ate:	(SIGNATURE OF PETITIONER)
Signature of all petitioners also required (Prob. Code, § 1020).) leclare under penalty of perjury under the laws of the State of Ca ate: (TYPE OR PRINT NAME) (TYPE OR PRINT NAME)	(SIGNATURE OF PETITIONER)
Signature of all petitioners also required (Prob. Code, § 1020).) eclare under penalty of perjury under the laws of the State of Cante: (TYPE OR PRINT NAME) (TYPE OR PRINT NAME) CONSENT TO TERMINATION AND WAIVI	(SIGNATURE OF PETITIONER)
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE AND FAX NOS.	
	FOR COURT USE ONLY
ATTORNEY FOR (Name)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	4
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
TEMPORARY GUARDIANSHIP CONSERVATORSHIP OF (Name):	
PETITION FOR APPOINTMENT OF TEMPORARY	CASE NUMBER:
Person Estate	
Petitioner (name of each):	
a. (Name and address):	requests t
b. (Name and address):	
be appointed temporary guardian conservator of the ESTATE of the	
innor proposed conservatee and <i>Letters</i> issue upon qualification. (1) bond not be required for the reasons stated in Attachment 1c.	
(2) \$ bond be fixed. It will be furnished by an admitted sure	ty insurer or co otherwise and in the
The amount is different from maximum re-	is insurer of as otherwise provided by la
	nuired by Probate Code section 0000 v
in deposits in a blocked account be allowed. Receipts	nuired by Probate Code section 0000 v
(3) [] \$ in deposits in a blocked account be allowed. Receipts location):	nuired by Probate Code section 0000 v
in deposits in a blocked account be allowed. Receipts	nuired by Probate Code section 0000 v
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the powers specified in Attachment 1d be granted in addition to the powers provide an order be granted dispensing with notice to the minor proposed	quired by Probate Code section 2320.) will be filed. (Specify institution and d by law. conservatee minor's mother
the powers specified in Attachment 1d be granted in addition to the powers provide an order be granted dispensing with notice to the minor proposed minor's father other person having a visitation order for the reas	quired by Probate Code section 2320.) will be filed. (Specify institution and d by law.
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<ul> <li>the powers specified in Attachment 1d be granted in addition to the powers provide</li> <li>an order be granted dispensing with notice to the innor proposed</li> <li>minor's father other person having a visitation order for the reas</li> <li>each by name and relationship.)</li> <li>other orders be granted (specify in Attachment 1f).</li> </ul>	quired by Probate Code section 2320.) will be filed. (Specify institution and d by law. conservatee minor's mother
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TEMPORARY GUARDIANSHIP CONSERVATORSHIP OF (Nan	ne); CASE NUMBER:
	ONSERVATEE
<ul> <li>4. The temporary guardianship conservatorship is required</li> <li>a pending the hearing on the petition for appointment of a general</li> <li>b pending the appeal under Probate Code section 2750.</li> <li>C during the appeal of conservatorship is required</li> </ul>	guardian conservator.
<ul> <li>5. Character and estimated value of the property of the estate:</li> <li>a. Personal property: \$</li> <li>b. Annual gross income from all sources, including real and personal property, wages, pensions, and public benefits: \$</li> <li>Total: \$</li> </ul>	
<ul> <li>CHANGE OF RESIDENCE OF PROPOSED CONSERVATEE</li> <li>Petitioner requests that the residence of the proposed conservatee</li> </ul>	be changed to (address):
The proposed conservatee will suffer irreparable harm if his or her less restrictive of the proposed conservatee's liberty will suffice to p stated below stated in attachment 6a):	residence is not changed as requested and no means revent the harm because (precise reasons are
b. The proposed conservatee must be removed from the State of Calif- non-psychiatric medical treatment essential to the proposed conserv consents to this medical treatment. (Facts and place of treatment an Attachment 6b.)	atee's physical survival. The proposed economics
<ul> <li>c. (Change of residence only) The proposed conservatee <ol> <li>will attend the hearing.</li> <li>will attend the hearing.</li> <li>is able but unwilling to attend the hearing, does not wish to conterobject to the proposed conservator, and does not prefer that and</li> <li>is unable to attend the hearing because of medical inability. An a or an accredited religious practitioner is affixed as Attachment 6c</li> <li>is not the petitioner, is out of state, and will not attend the hearing</li> </ol> </li> </ul>	ther person act as conservator. affidavit or certificate of a licensed medical practitioner
d. (Change of residence only) Filed with this petition is a proposed Orde	er Appointing Court Investigator (form GC-330).
7. Petitioner believes the minor proposed conservatee	will will not attend the hearing.
8. Number of pages attached:	
Date:	·
* (Signature of petitioner also required (Prob. Code, § 1020).)	(SIGNATURE OF ATTORNEY *)
I declare under penalty of perjury under the laws of the State of California that the f Date:	foregoing is true and correct.
(TYPE OR PRINT NAME)	(SIGNATURE OF PETITIONER)
GC-110 [Rev. January 1, 1998] PETITION FOR APPOINTMENT	(SIGNATURE OF PETITIONER)  F OF Page two
TEMPORARY GUARDIAN OR CONS	ERVATOR American LegalNet, Inc. www.USCourtForms.com
319	

		· · · · · · · · · · · · · · · · · · ·	GC-1	50	
ATTORNEY OR PARTY WITHO After recording return to:	OUT ATTORNEY	(Name, state bar number, and	d address):		
TELEPHONE NO .:					
FAX NO. (Optional):					
E-MAIL ADDRESS (Optional):					
ATTORNEY FOR (Name):					
SUPERIOR COURT OF CAL	IFORNIA, CO	UNTY OF			
STREET ADDRESS:					
MAILING ADDRESS					
CITY AND ZIP CODE:					
BRANCH NAME:					
	UARDIANSI	HIP CONSEF	VATORSHIP		
OF (Name):					OR RECORDER'S USE ONLY
					CASE NUMBER:
LETTERS OF TEMP	ORARY				-
	UNANT	GUARDIANS	Partners and a second s	CONSERVATORSHIP	
				Estate	FOR COURT USE ONLY
1. <i>(Name)</i> :		LETTERS			
is appointed temporar	, []				
		iardian 🔄 cons	ervator	of the person	
estate of (nan	ne):				
2. Cther powers ha	ave been g	ranted or restrictions	imposed o	n the temporary	
guardian	con	servator as	] specified		
specified i	n Attachme	ent 2.	_		
					· ·
These Letters shall exp	oire				
a on (date):		or upon earlier is	ssuance of	Letters to a general	
guardian or c				-	
b. b. other date (s)	oecify):				
The temporary without a specific	court orde	r.			ossession of money or any other prope
Number of pages attac					
ITNESS, clerk of the cou	rt, with sea	I of the court affixed	,		
EAL)	Date:				
	Clerk, by	,			
		(DEPUTY)			
	1				
			AFFIRMA	TION	
plemnly affirm that I will p	erform the	duties of temporary			t popular to t
ecuted on (date):			L yu	ardian conservato	or according to law.
place):		, California.		(SEAL)	WITNESS, clerk of the court, with
					seal of the court affixed.
					Date:
(SIGNATU	RE OF APPOIN	TEE)			Clerk by
	RTIFICAT				Clerk, by
rtify that this document	and any at	tachments is a corri	ect conv of		
onginal on file in my o	ffice, and	that the Letters iss	ued to the		
son appointed above ha	ave not be	en revoked: annul	ed, or set		
e and are still in full force	e and effec	t.		L	(DEPUTY)
Approved for Mandatory Use dicial Council of California		LETTE	RS OF TE	MPORARY	Probate Code, § 2250 et seg
150 [Rev. January 1, 2003]		GUARDIANSH	IP OR CO	NSERVATORSHIP	Code of Civil Procedure, § 2015.
320					American LegalNet, Inc. www.USCourtForms.com

.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, stale bar number, and address): TELEPHONE AND FAX NOS	GC-14
TELEPHONE AND FAX NOS.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS: MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
TEMPORARY GUARDIANSHIP CONSERVATORSHIP OF THE	
	R:
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTER	0.114.V.T. 10.04.V.T.
	S HAVE ISSUED.
The petition for appointment of a temporary guardian conservator came on for hear and d to indicate personal presence):	ing as follows (check boxes c
a. Judge (name):	
b. Hearing date: Time: Dept.:	Room
Petitioner (name):	
Attorney for petitioner (name):     Minor Conservatee (name):	
Attorney for minor conservatee (name):	
E COURT FINDS	
a Notice of time and place of hearing has been given as required by law.	
h l Mating af Alexandral a the transmission of the	th for <i>(names)</i> :
It is necessary that a temporary guardian conservator be appointed to	
care, maintenance, and support protect property from loss or injury.	provide for temporary
pending the hearing on the petition for appointment of a general guardian	conservator.
pending an appeal under Probate Code section 1301. during the suspension of powers of the guardian conservator.	
To prevent irreparable harm, the residence of the conservatee must be changed. No means less conservatee's liberty will prevent irreparable harm.	restrictive of the
The conservatee must be removed from the State of California to permit the performance of non treatment essential to the conservated physical automatical. The second state of the conservation of the second state of the second	psychiatric medical
treatment essential to the conservatee's physical survival. The conservatee consents to this med	dical treatment.
The conservatee need not attend the hearing on change of residence or removal from the State	of California.
COURT ORDERS	
(Name):	
(Address): (Telephone):	
is appointed temporary guardian conservator of the PERSON of (name):	
(name). and Letters shall issue	upon qualification
(Continued on reverse)	
(Continued on reverse) m Approved by the al Council of California D (Rev. January 1, 1998) TEMPORARY GUARDIAN OR CONSERVATOR	Probate Code, §§ 2250-2254

		ONSERVATORSHIP OF (Name): CASE NUMBER:
E	-	
7.	b. <i>(Name)</i> :	
	(Àddress):	
	(1.007.000).	(Telephone):
	· · · · · · · · · · · · · · · · · · ·	
	is appointed temporary guardiar (name):	conservator of the ESTATE of and <i>Letters</i> shall issue upon qualification.
8.	Notice of hearing to the persons name	in item 2b is dispensed with.
9.	a. Bond is not required.	
	b. Bond is fixed at: \$ provided by law.	to be furnished by an authorized surety company or as otherwise
	c. Deposits of: \$ location):	are ordered to be placed in a blocked account at (specify institution an
10. [	The conservator is authorized to change	the residence of the conservatee to (address):
11. [	The conservator is authorized to remove performance of nonpsychiatric medical t	the conservatee from the State of California to the following address to permit the eatment essential to the conservatee's physical survival (address):
12. [	The conservatee need not attend the he	ring on change of residence or removal from the State of California.
13. [	In addition to the powers granted by law, in Attachment 13 below	he temporary conservator is granted other powers. These powers are specified specify):
4. [		
	Other orders as specified in Attachment 14	
5. L	Unless modified by further order of the cou	t, this order expires on (date):
i. Nu	imber of boxes checked in items 8-15:	
. Nu	mber of pages attached:	
ate:		
		JUDGE OF THE SUPERIOR COURT SIGNATURE FOLLOWS LAST ATTACHMENT

# BRIDGING THE GAP

# LANDLORD/ TENANT

#### **UNLAWFUL DETAINER**

#### I. Failure to Pay Rent

- 1. Notice to Pay Rent or Quit
  - a. Serve 3 Day Notice To Pay Rent or Quit
    - i. Service Post and Mail/Personal/Substitute
    - ii. Only Include Outstanding Rent No late charges, fees, etc.
    - iii. Can only seek back rent for up to one year
    - iv. Make sure that amount of back rent claimed is accurate

Three day notice may be served by nail and mail if no one eligible to accept service is present at the tenant's home and the landlord believes the tenant has no business.

It is enough that the landlord properly served the notice under CCP §1162. Landlord need not prove that the notice was actually received by the tenant. <u>Bank of America Nat'l Trust & Sav. Ass'n v. Button</u> (1937) 23 CA.2d 651.

Proof that the tenant received actual notice will cure defective service Lehr v. Crosby (1981) 123 CA.3d Supp. 1.

- 2. Summons and Complaint
  - a. Summons
    - i. Judicial Council Form
    - ii. Service Personal or Substitute (only). You need leave of court to Post and Mail Summons and Complaint.
    - iii. Defendant has 5 days to respond before default (Do not include first day of service when counting time)
  - b. Complaint
    - i. Judicial Council Form UD 100
    - ii. Exhibits Need to attach lease agreement, three day notice, and proof of service of three day notice
    - iii. Include fair rental value of premises per day to get continuing holdover damages beyond three day notice
  - c. Prejudment Claim of Right to Possession
    - i. Judicial Council Form CP10.5
    - ii. Be Sure to Serve Along with Summons and Complaint
- 3. Default

- 4. Tenant's Answer
  - a. Judicial Council Form UD 105
  - b. Tenant's Defenses
    - i. Landlord's refusal to accept timely tender of rent Must be w/in 3 day time period. Be sure to specify date. Note if rent accepted after three day then Landlord has waived prior breach and new tenancy created, but Landlord not required to accept after three day period.
    - ii. Breach of Implied Warranty of Habitability Breach must be substantial
    - iii. Landlord's breach of covenant in rental agreement Breach should be substantial
    - iv. Landlord's Breach of Covenant of Quiet Enjoyment In some circumstances may support affirmative defense to pay rent
    - v. Improper Service of Three Day Notice
    - vi. Three Day Notice Overstates Rent due
    - vii. Unlawful Detainer filed prematurely 3 or 30 day notice has to fully run b/4 filing UD action.
- 5. Motion for Summary Judgment
  - i. CCP 437c
  - Matter Decided on Papers It is error to permit oral testimony. (See, <u>Gardner v. Shoeve</u> (1959) 89 CA.2d 804, <u>Spenser v. Hibernia</u> <u>bank</u>, (1960) 186 CA.2d 702, and California Rules of Court, Rule 3.1306(a).
  - iii. Must file Responsive Papers The motion for summary judgment assumes the sufficiency of the pleadings, and <u>calls for evidentiary affidavits</u> to show whether there is any substantial <u>proof</u> to support the allegations. [emphases added] (Witkin, <u>California Procedure</u>, (1985) 3d. Ed., "Proceedings Without Trial", Section 280 p. 580. In <u>Coyne v. Kremples</u>, supra, the court stated that the defendant may not rely on their answer, but must file sufficient counter-affidavits. The court then stated that from the affidavits "... the Court may determine whether the triable issues apparently raised by them are <u>real or merely the product of adept pleading.</u>" [emphasis added] *Id.* at 262 (Witkin, <u>supra</u>, Section 280 at p.580-581.)
  - iv. May be filed after the answer is filed and heard on as little as 5 days notice.
  - v. Don't forget separate statement of undisputed facts
- 6. Request For Trial Setting
  - i. After Defendant has answered immediately file request for trial setting (Judicial Council Form UD-150)
  - ii. Court must set trial within 20 days a/f receiving request for trial setting

## II. TRIAL

1. Plaintiff's Prima Facie Case

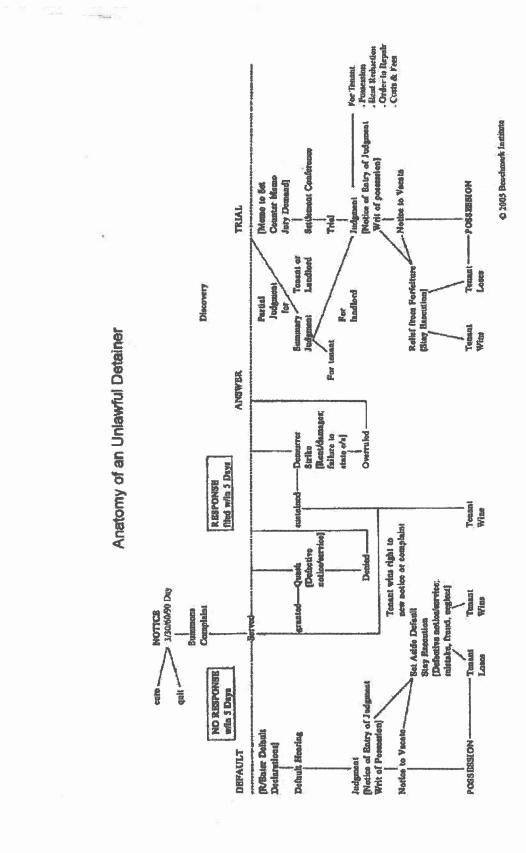
#### a. Landlord-Tenant Relationship i. Plaintiff is Landlord/Owner ii. Lease Agreement

#### b. Termination of Landlord-Tenant Relationship

- i. Tenant failed to pay rent as became due under lease
- ii. 3-day Notice to Pay rent or quit
  If service controverted than landlord must introduce evidence of compliance Lacrabere v. Wise, 141 C. 554
  Registered Process server's proof of service can be introduced as business record (Evid. Code §1271) creating a presumption (Evid. Code §647). Bus. & Prof. Code §22350
- c. Tenant's continued wrongful possession
  - i. Landlord's testimony that tenant still has keys to premises. <u>Levy v.</u> <u>Henderson</u>, 31 CA. 789, 791
  - ii. Landlord's testimony that tenant left significant personal property. <u>Cohen v. Super. Ct.</u>, 248 CA.2d 551
- c. Damages
  - i. Agreed upon contract rent is highly probative. <u>Lehr v. Crosby</u>, 123 CA.3d Supp. 1, 9; Evid. Code §817 & 818.
  - ii. Attorney's Fees/Costs File Declaration
- 2. Tenant's Case
  - Landlord's refusal to accept timely tender of rent Must be w/in 3 day time period. Be sure to specify date. Note if rent accepted after three day then Landlord has waived prior breach and new tenancy created, but Landlord not required to accept after three day period.
  - b. Breach of Implied Warranty of Habitability Breach must be substantial
  - c. Landlord's breach of covenant in rental agreement Breach should be substantial
  - d. Landlord's Breach of Covenant of Quiet Enjoyment In some circumstances may support affirmative defense to pay rent
  - e. Improper Service of Three Day Notice
  - f. Three Day Notice Overstates Rent due
  - g. Unlawful Detainer filed prematurely 3 or 30 day notice has to fully run b/4 filing UD action.

## **III. POST-JUDGMENT**

- 1. Judgment (Judicial Council Form JUD-100)
- 2. Writ of Possession (Judicial Council Form EJ 130) Check with court for local form for Application for Writ of Possession
- 3. Sherriff's Instructions Letter



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## Resources

#### Housing Task Force Update

Quarterly. Western Center on Law & Poverty What a resource! The latest news, publications, conferences and trainings and litigation updates in fair housing, homeownership, landlord tenant, mobile homes and more. To subscribe, email Lynn Martinez at <u>slmartinez@wclp.org</u>. Once you're hooked, you'll never be the same.

Housing Task force meets 4 times a year – face to face. A must attend. For info, contact Lynn Martinez at <u>slmartinez@wclp.org</u>.

#### **Judicial Council Forms**

http://www.courtinfo.ca.gov/forms (Look under "Pleading - Unlawful Detainer) The California Judicial Council prepares officially accepted court forms. You can download forms for unlawful detainer cases including answer forms & form interrogatories.

#### **California Eviction Defense Manual**

California Continuing Education of the Bar 2d edition, 1100 pages, 2 looseleaf volumes, updated annually (4/08).

http://www.ceb.com/

Click on publications, practice books, then real property.

The eviction defense bible by Myron Moskovitz, "Mr. Habitability" and our learned colleages at Bay Area Legal Aid, California Rural Legal Assistance and others.

California Landlord-Tenant Practice, 2d

Ed., California Continuing Education of the Bar 2d edition, 2 looseleaf volumes; updated annually (2/08). These volumes include both transactional and litigation practice. It covers selecting tenants, drafting rental agreements, discrimination and rent control law, mobilehome tenancies, and unlawful detainer procedures.

## Landlord-Tenant (The Rutter Group California Practice Guide)

Thomson & West; 1624 pages, binder/ looseleaf, updated September 2007

#### http://west.thomson.com/product/11226843/pr oduct.asp

By Terry B Friedman and David A Garcia and Mark Hagarty. People find this a very useful and practical resource.

#### HUD Housing Programs: Tenants Rights (3rd ed. 2004)

http://www.nhlp.org/-"Publications" http://www.nhlp.org/html/pubs/manuals.htm By the National Housing Law Project The ultimate guide to public and subsidized housing law. For more details, *see* Public and Subsidized Housing- Resources.

#### RHCDS (FmHA) Housing Programs: Tenants' and Purchaser's Rights 2d ed. 1995)

By the National Housing Law Project A great guide for rural housing programs.

#### California Tenants: A Guide To Residential Tenants' And Landlords' Rights and Responsibilities

Department of Consumer Affairs 2006 Edition 2007 Update

The Guide contains excellent information with legal citations to information on deposits. Check out the table of contents. Good for clients and good for advocates. Free copies for your office to distribute to clients.

http://www.dca.ca.gov/publications/landlordb ook/index.shtml

#### Foreclosure Hotline for Tenants -

**415.495.8012.** <u>Tenants Together</u>, California's Statewide Organization for Renters' Rights, has a new statewide <u>hotline</u> for tenants in foreclosure situations. The hotline helps identify if a particular rental property is in foreclosure; identify the new owner after a foreclosure sale agencies and officials; and stand up to abusive and unfair conduct during the foreclosure process <u>http://www.tenantstogether.org/index.php</u>

### California Tenants' Rights (Nolo

Press) 17th Edition, April 2007; http://www.nolo.com

#### By Attorneys Jane Portman & David Brown

Founded by a group of legal services attorneys, Nolo does law for real people. Tenants' Rights is one of their classics. These materials are a wonderful resource for advocates, social service providers and tenants alike. Check out the companion Landlord volume.

#### California Housing Advocates List Serv - Western Center on Law & Poverty

If you have a housing issue that's baffling you or a housing related announcement of some broad import, this is the place to go. To subscribe, email Lynn Martinez <u>slmartinez@wclp.org</u>.Tell her "Benchmark sent you."

#### **California Housing Law Project**

http://www.housingadvocates.org/default.asp? ID=9

The best site to find out what's happening in the California legislature as it happens. Good links to tenant associations and other tenant information.

#### Forms Software Judicial Council

Legal SolutionsPlus (West) http://west.thomson.com/store/product.asp?produc t%5Fid=17879436

## SmartLaser 2000 (Continuing Education of the Bar)

http://www.ceb.com/sl2ktour/sl2kview.html

Online Interactive Judicial Council Forms (LexisOne) <u>http://www.lexisone.com</u>

#### Free Individual Forms @California Courts <u>http://www.courtinfo.ca.gov/cgibin/forms.cgi</u>

## Automated Document Assembly and Forms Generation

HotDocs <u>http://www.hotdocs.com/</u>

#### LexisOne - Online Interactive Text Forms http://www.lexisone.com

**Omniform - ScanSoft** Ken Carlson, tenant private practitioner, recommends. <u>http://www.caltenantlaw.com/ForLawyers.htm</u>

#### On line Pro Per Systems EZLegalFile

www.EZLegalFile.org California Superior Court service helps individuals fill out court forms including evictions and small claims.

#### **I CAN Legal Modules**

https://secure.icandocs.org/newweb/index.html Orange County Legal Aid (read Crystal Sims, an esteemed Benchmark trainer) authored these materials that helps individuals complete U.D. forms for some counties. Also is located in kiosks in several southern California cities and Sacramento.

#### **California Courts Self-Help Center**

http://www.courtinfo.ca.gov/selfhelp/other/lan dten.htm

This site offers no legal advice, but links to sites on finding legal help and learning California landlord/tenant law. Eviction information and forms.

#### Other

**California Tenant Law** Ken Carlson, tenant attorney in private practice, has a web site with good information including where to find moving companies, self-storage space, anti-snoop locks, and mold testing kits.<u>http://www.caltenantlaw.com/</u>

## **Eviction Defense Checklist**

Topic	Page	Торіс	Page
Client	(1)	. Repair & Deduct	(7)
Parties	(1)	. Retaliation	(7)
Tenancy	(2)	. Discrimination	(7)
. Deposit	(3)	. Rent Control	(8)
. Notice	(3)	. Public/Subsidized Housing	(8)
. Summons	(5)	. Relocation	(9)
. Rent	(5)	. Post-Judgment Relief	(9)
. Nuisance	(6)	. Next Steps	(10)
. Habitability	(6)	. Attachment 3j	(11)

#### 1. Client

Name			
Address			
Telephone(W)	(H)	(Cell)	
Goals			
2. Parties			
LL		LL Attorney	
Mgmt Co		Manager	
Manager			
Co Tenants		Sub-Ts	

Lodger Employee	Former Owner (Foreclosure) Tenant of Foreclosed Owner Other
Notes:	
3. Tenanc	У
Private:	
Regular	MobilehomeRVFloating HomeSROShelter
_ Nursing H	ome, Residential Care Facility Transitional HousingOther
Public/Subsi	dized:
_ Public LIHTC	§8 Voucher §202 §221(d)(3)/ §236221(d)(3)/ §236 with §8 Other
Other:	
Notes:	
NOICS	
Agreement/	Lease
Rental Ao	reement Month-to-Month Lease Written Oral
Juner:	
Move In	// Original Rent \$ Current Rent \$

**EVICTION DEFENSE HANDBOOK** 

Notes (including any changes in agreement):

#### 4. Deposit

Amount	Increase
"Non-refundable"	Date increased
Notes:	

#### 5. Notice

A. Type/Content

#### **Private**

\_ No Notice (end of fixed term lease; end of employment; at will; <u>tenant</u> gave 30-day notice; other)

\_ 3-day Notice to Pay or Quit \$\_\_\_\_\_ Amount in Notice

\_\_\_ Rent only \_\_\_ Amount Correct (If not, amount is \$\_\_\_\_\_)

\_\_ Late Fee Included \_\_ Over 1 Year \_\_ Correct Language

#### \_\_\_\_ 3-Day Notice to Quit

\_\_\_ Reason Stated \_\_\_ Reason Proper \_\_\_ Vague

#### \_\_\_ 3-Day Notice to Cure or Quit

\_\_\_ Reason Stated \_\_\_ Reason Proper \_\_\_ Vague

30-Day Notice 60-Day Notice
Reason Stated
90-Day Notice
Notes:
Subsidized (Project-based or vouchers)
10 Day3 DayCombined 10 Day/3 Day90 Day
Meet & DiscussReason StatedVague
Notes:
Public
14 Day Notice Reason Stated Hearing Vague
I Duj I touson Suited I touring vugue
Notes:

**EVICTION DEFENSE HANDBOOK** 

Page	5
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**B.** Service of Notice

\_\_\_\_Date \_\_\_Personal \_\_\_\_Mail/Post \_\_\_\_Sewer \_\_\_\_Substituted Service

Other:\_\_\_\_\_

#### 6. SUMMONS & COMPLAINT

Timing

x munit
Date Served/ By Whom
Service
PersonalMail/Post (Court Order) Substituted Service Sewer
Complaint
Defects on Face Defects on Face & Attachments
Prejudgment Claim of Possession
Served on:
Served by:
7. RENT
Tenant Paid LL Waived/Estopped by Conduct
Tenant TenderedAll or part paid by 3rd party (DSS;PHA)
Amount Miscalculated Novation Set off (Deposits, Fees)
Asks for non-rent amounts
Notes:

8. NUISANCE
_ Events Did Not Occur _ Nuisance Cured _ Discriminatory Enforcement
_ Caused by Others _ No Substantial Breach _ No Notice of Rule(s)
_ Not a Nuisance _ LL waived/estopped by conduct
Notes:
9. HABITABILITY
Conditions re safety & habitability (see last page)
Notice to LL LL Knowledge LL Fails to Repair
Tenant ConductCondemnation/Code Enforcement
_ Any injuries to tenant or family
Notes:
10. REPAIR & DEDUCT
_ Conditions re safety & habitability (see last page)
_ Notice to LL _ LL Failure to Repair _ Cost of Repairs _ Receipts
Notes:

**EVICTION DEFENSE HANDBOOK** 

#### **11. RETALIATION**

\_\_\_\_Asserting legal rights\_\_ Complaints re Habitability \_\_ Rent Control\_\_ Tenant Organization \_\_\_\_Dates of protected activities\_\_\_\_\_\_

Other:\_\_\_\_\_

\_ LL Knowledge \_ Presumption
Notes:\_\_\_\_\_

#### **12. DISCRIMINATION**

\_ Race \_ National Origin \_ Religion \_ Gender/Sexual Harassment

\_Family Status (children) \_ Sexual Preference \_ Marital Status

\_\_\_Disability/Reasonable Accommodation

\_\_\_Other Arbitrary \_\_\_Source of income, e.g. welfare recipient

\_ Administrative Complaints (HUD/DFEH) \_ Filed \_ Collateral Estoppel

Why at issue now and not when rented? (e.g., change in management or family status)

Notes:

**EVICTION DEFENSE HANDBOOK** 

#### **13. RENT CONTROL**

\_ Procedural Compliance \_ Just cause \_ Amount of rent

Notes:\_\_\_\_\_

### 14. PUBLIC/SUBSIDIZED HOUSING

Due Proce	ŝS	
_Notice	_ Opportunity for Hearing _ Tenant appear at hearing	
Access to	o Information	
Notes:		
Just Cause		
Notes:		
_§8 Vou	cher Transfer/Termination	
Notes:		

#### Page 9

#### 15. RELOCATION

\_\_ City/Govt. Agencies Involved \_\_ Displacement/Relocation \_\_\_ Other

Notes: \_\_\_\_\_

#### **16. POST-JUDGMENT RELIEF**

#### Default

Motion to Set Aside

\_\_\_\_ Client served/has reason why did not answer \_\_\_\_ Substantive defense

Motion to Quash/Motion to Set Aside

\_ Client not served \_ Substantive defense

Relief from forfeiture

Stay \_\_\_\_

Notes:\_\_\_\_\_

#### Non-default

Relief from forfeiture

\_ Client can pay entire judgment

\_\_\_Hardship factors\_\_\_\_\_

Stay

\_ Client can pay for extra time

\_\_ Hardship factors\_\_\_\_\_

Notes:

#### Page 10

#### **17. NEXT STEPS**

#### \_ Represent

(Retainer, client posts rent in trust account, counter-memo to set, discovery, jury trial.)

_ Pro Per	_ Referrals			
Notes:				
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# BRIDGING THE GAP

# SOLO PRACTITIONER

#### SOLO PRACTICE BRIDGING THE GAP FEBRUARY 5, 2011

#### 1. Solo Practice – Is It Right For You?

As a solo practitioner you will be expected to juggle several roles. You will have to establish the business, bring in clients ('marketing") keep your clients happy ("practicing law") and keep the business running smoothly.

#### 2. Establishing the Business

- A. Office Space
  - a) Traditional Space
  - b) Sub-Lease
  - c) Executive Suits
- B. Office Set-Up
  - a) Basic Equipment
    - i. Computers, Printers, Fax machine, scanners.
    - ii. Telephones, PDAs,

#### b) Software Technology

- i. Word-processing
- ii. Billing and Timekeeping
- iii. Research
- c) Furniture
- d) Supplies
  - i. Paper, pens, etc...
  - ii. Letterhead and business cards
- e) Everything Else
  - i. Insurance
  - ii. Website
  - iii. Licenses, Memberships and Subscriptions
  - iv. Bank Accounts (Trust Fund, Business, Retirement)
- f) Structures For Getting Paid
  - i. Attorney-Client Agreements (Engagement Letters)
  - ii. Fee Structure (Hourly, Contingency, Hybrid, Flat-fee)
  - iii. Method of Payment (Cash, Credit Cards, Checks)
  - iv. Billing Cycle

- C. Setting Up Your Fortress
  - a) Assistants:
    - i. Employees
    - ii. Independent Contractors
    - iii. Students
  - b) Attorney Service
  - c) Vendors/Professionals Who Can Help You
- D. Business Formation Issues
  - a) Corporate Structure
    - i. Solo Practice, Corporation, LLC?

#### 3. Marketing the Business

- A. Referral Sources
  - a) Friends, family, colleagues and other professionals
  - b) Networking Organizations
    - i. Private Groups (Le Tip or BNI)
    - ii. Community and Professional Organizations
- iii. Volunteering, public speaking, publishing
- B. Mass Marketing
  - a) Website (Include disclaimer)
  - b) Advertising
  - c) Direct Mailing
  - d) Announcements Events, Seminars, Open House.
- C. To Specialize or Not?

#### 4. Conclusion

- a) Manage Your Expectations
- b) Strive For Balance

Additional Resources Available Online:

Please see addendum "A" for a list of professional organizations Please see addendum "B" for examples of Fee Agreements Please see addendum "C" for an example of an email and website disclaimer Please see addendum "D" for other informative information

## ADDENDUM "A"

Professional organizations are a great way to build your network and mentor contacts. The following represents a few of the many professional organizations available to you. This list is by no means exhaustive.

Orange County Bar Association - www.ocbar.org/ Sections Affiliates Committees

State Bar of California - www.calbar.org/ Sections Affiliates Committees

American Bar Association - www.abanet.org/ Sections Affiliates Committees

Association of Trial Lawyers of America - http://www.atla.org/

Consumer Attorneys of California - http://www.caoc.com/ca/

California Trial Lawyers Association

Orange County Women Lawyers - http://www.ocwla.org/

California Women Lawyers - http://cwl.org/index.shtml

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## ADDENDUM "B"

## FEE AGREEMENT EXAMPLES

#### YOUR FIRM NAME HERE

[date]

[client name] [address] [address]

Re: |matter|

Dear [Client] :

This is the written fee agreement ("Agreement") that California law requires attorneys to have with their clients. In accordance with California law and the practices of this office, this Agreement will set forth the terms and conditions under which [FIRM NAME] ("Attorney") will provide legal services to [ client name ]("Client") on the matter as set forth below.

#### **ARTICLE 1.** CONDITIONS

This agreement will not take effect, and Attorney will have no obligation to provide legal services, until Client returns a signed copy of this Agreement and pays the [ fixed fee ] as agreed under Article 6.

#### **ARTICLE 2. SCOPE OF SERVICES**

Client hires Attorney to provide legal services in the following matter: [describe matter]. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Attorney will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in execution proceedings after judgment. Separate arrangements must be agreed to for those services. Service in any matter not described above will require a separate Agreement.

#### **ARTICLE 3.** CLIENTS DUTIES

Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to

#### YOUR FIRM CONTACT INFORMATION HERE

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abide by this agreement, to pay Attorney's bills on time and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney in providing necessary information and documents and will appear when necessary at legal proceedings.

#### ARTICLE 4. COSTS ASSOCIATED WITH LEGAL SERVICES 4.1 ATTORNEY AND LEGAL PERSONNEL COSTS

The Attorney will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs and expenses in addition to the agreed upon [fixed fee or hourly rate]. All time charged will be charged in minimum units of one tenth (.10) of an hour.

Attorney time charged will include time spent on telephone calls relating to Client's matter, including telephone calls with Client, witnesses, opposing counsel or court personnel. Time charged will also include time spent attending meetings, court hearing or other proceeding including waiting time in court and elsewhere and for travel time, both local and out of town.

Legal personnel assigned to Client's matter may from time to time confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.

Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney and or Attorney's legal personnel. Client will be charged at an hourly rate for the time Attorney or Attorney's legal personnel is required to spend traveling.

#### 4.2 EXPERTS AND INVESTIGATORS

To aid in the preparation or presentation of Client's case, it may become necessary to hire expert witnesses, consultants or investigators. Client agrees to pay such fees and charges. Attorney will select any expert witnesses, consultants or investigators to be hired and Client will be informed of persons chosen and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of the Client.

#### 4.3 SCHEDULE OF COSTS AND EXPENSES

The costs and expenses associated with performance of legal services commonly include, but are not limited to, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges,

[client name] October 24, 2003 Page 3

messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional mediator/arbitrator and/or special master fees and other similar items. Except for the items listed below, all costs and expenses will be charged to the Client at Attorney's cost.

- Tele-Conference (Counseling over the phone w/follow-up documentation) (Client will be charged at an hourly rate of \$125.00 per hour – minimums apply)
- Correspondence:
  - Local Telephone Calls
  - Long Distance Telephone Calls
  - o Letters
  - o Email
  - o Facsimile
    - Send
- Photocopying
  - o In-Office
  - o Out-of-Office

No charge (See Tele-Conference above) \$1.00 or more subject to 10% surcharge \$0.48 per letter No current charge

\$0.20 per page local \$0.30 per page long distance

\$0.20 per page Industry Standard Rate

### ARTICLE 5. DEPOSITS FOR COSTS AND OTHER CHARGES

The initial deposit, as well as any future deposits, will be held by the Attorney in a client trust account. Client authorizes Attorney to use deposit funds to pay fees and other charges as they are incurred. [Hourly charges or fixed fees] will be credited against the deposit. Payments from the client trust fund will be made upon remittance to client of a billing statement. Client acknowledges that the deposit is not an estimate of total fees and costs, but merely an advance for security. (See Article 11 below).

Client agrees to pay Attorney an initial deposit of [(\$)] by [date]. Whenever the initial deposit is exhausted, Attorney reserves the right to demand further deposits, each up to a maximum of [(\$)].

Once a trial or arbitration date is set, Client shall pay all sums then owing and pay Attorney an additional deposit to include the attorney's fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as the jury fees or arbitration fees, expert witness fees and other costs likely to be assessed. Those sums may exceed the maximum deposit as noted above.

Client agrees to pay all deposits after the initial deposit within seven (7) days of Attorney's demand. Unless otherwise agreed in writing, any unused deposit at the conclusion of Attorney's services will be refunded.

YOUR FIRM ADDRESS AND CONTACT INFORMATION HERE

### ARTICLE 6. LEGAL FEES

#### Hourly Rates [hourly clause]

Client agrees to pay by the hour, at Attorney's prevailing rates, for all time spent on Client's matter by the Attorney and by the following legal personnel.

Hourly Rates:

Attorney	[	] /hour
Associates	[	]/hour
Paralegals	[	]/hour
Law Clerks	Ī	]/hour

#### *Fixed Fees* [fixed fee clause]

Client agrees to pay a fixed fee of [(\$)] for Attorney's services under this Agreement. The fixed fee is due by [date].

Attorney shall have no obligation to provide services to Client until the fixed fee is paid in full. Unless Attorney withdraws before the completion of the services or otherwise fails to perform services contemplated under this Agreement, the fixed fee will be earned in full and no portion of it will be refunded once any material services have been performed.

#### ARTICLE 7. BILLING STATEMENTS

Attorney will send Client a statement for costs incurred. The statement will be payable within thirty (30) days of its mailing date. Client may request a statement at any time. If Client so requests, Attorney will provide a statement within ten (10) days. The statements shall include the amount, rate, basis of calculation or other method of determination of the costs, which costs will be clearly identified by item and amount.

#### **ARTICLE 8. INTEREST CLAUSE**

If a billing statement is not paid when due, interest will be charged on the principal balance (fees, costs and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT (10%) ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest until paid.

#### ARTICLE 9. LIEN

Client hereby grants Attorney a lien on any and all claims or causes of action that are the subject of the representation under this Agreement. The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise.

#### ARTICLE 10. DISCHARGE AND WITHDRAWAL.

Client may discharge Attorney at any time. Attorney may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Attorney will, upon Client's request, deliver Client's file and property in Attorney's possession, whether or not Client has paid for all services.

#### **ARTICLE 11. DISCLAIMER OF GUARANTEE AND ESTIMATES**

Nothing in this agreement and nothing in Attorney's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given. No other services are covered by this agreement.

Attorney will not provide any representation or advice concerning taxes, tax planning or tax consequences of any kind relating to Attorney representation, settlement or judgments received. Such representation or advice is beyond the scope of this agreement and beyond the scope of Attorney's expertise.

#### **ARTICLE 12. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

#### ARTICLE 13. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY

If any portion of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

#### **ARTICLE 14. MODIFICATION BY SUBSEQUENT AGREEMENT**

This Agreement may be modified by subsequent Agreement of the parties only by an instrument in writing signed by both parties or an oral agreement only to the extent that the parties substantially perform said modification or subsequent agreement.

#### **ARTICLE 15. MEDIATION CLAUSE**

If a dispute arises out of or relating to any aspect of this Agreement between Client and Attorney, or the breach thereof, and if the dispute cannot be settled through negotiation, Attorney and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

#### **ARTICLE 16. ARBITRATION OF DISPUTES**

By initialing this arbitration provision, Client and Attorney are agreeing to have any and all disputes (except where Client may request arbitration of a fee dispute by the State Bar or local bar association as provided by Business and Professions Code Sections 6200, et. seq.), that arise out of, or relate to this Agreement, including but not limited to claims of negligence or malpractice arising out of or relating to the legal services provided by Attorney to Client, decided only by binding arbitration, conducted in Orange County, California, before a retired judge in accordance with the rules of JAMS/Endispute prevailing at the time of the arbitration, and not by court action, except as provided by California law for judicial review of arbitration proceedings.

The arbitrator shall be empowered to order the losing party in the arbitration to reimburse the prevailing party for all expenses incurred in connection with the arbitration, including, without limitation, the arbitrator's fees and reasonable attorney fees and costs. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Attorney and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with Code of Civil Procedure Section 1283.05.

In agreeing to this arbitration provision, ATTORNEY AND CLIENT ARE SPECIFICALLY GIVING UP:

- (i) ALL RIGHTS ATTORNEY AND CLIENT MAY POSSESS TO HAVE SUCH DISPUTES DECIDED IN A COURT OR JURY TRIAL; AND
- (ii) ALL JUDICIAL RIGHTS, INCLUDING THE RIGHT TO APPEAL FROM THE DECISION OF THE ARBITRATOR(S).

IF EITHER ATTORNEY OR CLIENT SHOULD REFUSE TO SUBMIT TO ARBITRATION, EITHER ATTORNEY OR CLIENT MAY BE COMPELLED TO ARBITRATE UNDER CALIFORNIA LAW. ATTORNEY AND CLIENT ACKNOWLEDGE THE ABOVE, AND THAT THIS MUTUAL AGREEMENT FOR BINDING ARBITRATION IS VOLUNTARY.

By initialing below, Client confirms that Client has read and understands this provision, and voluntarily agrees to binding arbitration. In doing so, Client voluntarily

gives up important constitutional rights to trial by judge or jury, as well as rights to appeal. Client is advised that Client has the right to have independent counsel review this arbitration provision, and this entire agreement, prior to initialing this provision or signing the Agreement. \_\_\_\_\_\_(Client); \_\_\_\_\_\_(Attorney) ARTICLE 17. EFFECTIVE DATE

This Agreement will govern all legal services performed by Attorney on behalf of Client commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for Client.

Please contact the undersigned if you have any questions regarding any matter stated above. If you find everything in order, kindly sign and return the original of this letter to me along with your deposit [and the agreed upon flat fee]. The enclosed copy of this letter is for your files.

Very truly yours,

Your Name YOUR FIRM NAME

I HEREBY APPROVE AND AGREE to each of the terms and conditions set forth above, and acknowledge receipt of a copy of this letter agreement.

Dated:

[CLIENT NAME]

June 6, 2006

#### [CLIENT NAME] [STREET ADDRESS] [CITY, STATE, ZIP]

#### Re: Engagement letter [LAWSUIT NAME]

Dear [CLIENT NAME]:

Both good business practice and the California Business and Professions Code require that we agree in writing that our expectations are the same related to your company's retention of our services. In this letter we will describe those expectations as we understand them, as well as set forth some other basic terms that we customarily require. If the expectations and terms are completely acceptable to you, we ask that you sign below, forming a written agreement between us. If you have any question or concern about any term of this letter agreement, please call us to discuss it.

**Scope of engagement.** You, [CLIENT NAME], (hereinafter "Client" "you" "your"), is hiring [YOUR FIRM NAME] ("the firm"), to act as your attorney in the lawsuit brought against you entitled *[LAWSUIT NAME]*, [COURTHOUSE] case no. [CASE NUMBER] ("the Action"). The firm has been hired to file all necessary paperwork, make all necessary appearances, and engage in all reasonable acts to assist you in defending your company in the lawsuit. This engagement shall include all acts reasonably necessary to achieve this end.

No guarantee of outcome. Please understand that the firm will from time to time discuss possible outcomes of various decisions you may be called to make in the course of your business, and we may be called to attempt to achieve certain results for you. The firm will make all reasonable efforts to achieve your desired results. However, business relationships and litigations are often highly unpredictable. I am sure you understand that the firm cannot make any promise or guarantee that it can achieve any particular result. Our comments about possible outcomes are expressions of opinion only.

**Our obligations to one another.** The firm agrees to be truthful with you, to cooperate, to keep you informed of significant developments, to make all necessary appearances, and, to the best of its abilities, ethically and zealously represent your interests. In turn the firm asks that you agree to be completely truthful with us, to

YOUR FIRM CONTACT INFORMATION HERE

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[CLIENT NAME] June 6, 2006 Page 2 of 6

cooperate, to keep us informed of any developments, to abide by this agreement, to make all necessary appearances, and to pay all fees and costs as provided later in this letter agreement.

We will require your utmost in cooperation. There will be certain obligations required of you. These obligations may carry deadlines. The firm will, from time to time, need your timely assistance in meeting those deadlines. The firm will make all reasonable efforts to keep you informed of any important deadlines that may be approaching. The attorney-client relationship is very much a team effort. If you have any questions or concerns during this engagement, please call and we promise to respond to your calls in a timely manner.

**Our compensation.** You have agreed to pay the hourly rate for the firm's attorneys and legal staff, according to the following schedule:

[ATTORNEY]	\$000 per hour
[ATTORNEY]	\$000 per hour
Paralegal	\$75 per hour
Law Clerk	\$50 per hour

Other attorneys may be assigned to work on your matter as the lawsuit progresses. Their hourly rates will be established by the firm based on their years of experience, efficiency of work and overall effectiveness. The rates stated herein are those effective January 2006, and may be revised by the firm annually based on generally understood prevailing rates in the Los Angeles/Orange County legal community.

[RESPONSIBLE ATTORNEY] has been assigned as the lead attorney at the firm for your matter. The firm will assign work to attorneys and staff other than [RESPONSIBLE ATTORNEY] when in his opinion your interests will be served by such an assignment. [RESPONSIBLE ATTORNEY] will remain ultimately responsible for all work performed by the firm on your matter, and he will review and supervise all such work.

You agree to pay for all work reasonably performed by the firm. The firm will keep accurate time records and provide you with periodic invoices which will itemize the activity of the firm on your matters. The firm bills in one-tenth of an hour increments. It bills for all time reasonably spent on your matter, which includes, but is not limited to, phone calls, meetings, research, writing, strategizing, waiting time in court and at meetings, as well as travel time, both local and out of town.

We will provide you with periodic invoices for time spent on your matter, and we will look for payment from you within 15 days of your receipt of our invoice.

**Out-of-Pocket Costs.** Apart from the agreement to pay an hourly fee, you have agreed to pay for out-of-pocket costs that the firm may reasonably incur as part of your

[CLIENT NAME] June 6, 2006 Page 3 of 6

representation. These costs could include, but are not limited to, filing fees, service-ofprocess fees, deposition costs, document copying, printing and scanning, transcript fees, jury fees, parking expenses, travel expenses, long distance charges, fees for expert witnesses and consultants, and other witness fees. The rate charged per page for photocopies, printing and scanning is \$.20. We will not charge you for printing draft documents. Fax transmissions will not be billed. The firm will try to keep you informed about substantial costs before they are incurred so that you can plan the expense. We would be happy to provide you with an estimated budget of anticipated expenses at any time upon your request.

You agree to reimburse our costs as the matter proceeds. We will provide you with periodic invoices for costs incurred, and we will look for payment from you within 15 days of your receipt of our cost invoice. We will maintain proper backup support documentation for any invoiced cost, which you may request at any time.

**Deposit Agreement.** You agree to provide the firm with an initial deposit in the amount of **\$**[DEPOSIT AMOUNT], which shall be placed in the firm's Trust Account. we are authorized to remove from the Trust Account and place into our General Account, that sum of money which is reflected as the "Total Amount of This Bill" on each invoice presented to you, on the date such invoice is mailed to you. The Trust Account money will be used to pay that outstanding balance. You agree to keep the Trust Account balance at that level until conclusion of the Action. To that end, when you receive a firm invoice reflecting the transfer of Trust Account money to pay an outstanding balance, you agree to send a check within 15 days of that invoice to bring the Trust Account balance back up to the requested level. At the conclusion of the Matter, when the final invoice is prepared and paid, you will be sent any money remaining in the Trust Account credited in your favor at that time.

**Right to withdraw.** If you breach this agreement, or if the firm determines based upon some fact or circumstance that continuing to represent you would render the firm's further participation unlawful or unethical, the firm has the right and duty to withdraw from this engagement.

**Right to discharge.** You have the absolute right to discharge the firm as your attorney at any time, and for any reason. Discharging the firm does not, however, relieve you of your obligation to pay the firm for work performed on your matter. If for any reason a court, or arbitrator or other entity wishes to determine the reasonable and fair value of the firm's services, you agree that the reasonable value of the firm's services is equal to the hourly rates set forth above. In the event of discharge for any reason other than willful misconduct or incapacitation, the firm has the right to impose a lien for unreimbursed costs and unpaid fees (computed at the above rates) on any recovery you might receive in any matter handled by the firm. In addition to the above-stated lien, you authorize the firm to receive any settlements or paid judgments, to deduct fees and cost advances from any settlement or paid judgment, and to pay the balance to you.

[CLIENT NAME] June 6, 2006 Page 4 of 6

**Professional Liability Insurance.** The firm does not presently have professional liability insurance in place. The firm does not make any representation about whether it will be procured, maintained if once procured, or that the limits or coverages contained therein would be adequate to cover any foreseeable contingency.

Attorney Fees for Collection Efforts. While we certainly anticipate that you will pay all invoices in a timely manner, if for any reason it becomes necessary for the firm to commence litigation or arbitration to collect money due to it, the prevailing party in that litigation or arbitration shall be entitled to its reasonable attorney fees actually incurred in that litigation or arbitration.

Interest on Outstanding Balances. If for any reason your balance due and owing to this firm remains outstanding for more than 60 days after demand for payment has been made, the firm shall be entitled to charge interest on that balance at the rate of one and one-half percent per month, compounded monthly, from the date the balance first became due through and including the date of payment.

Notice of Risks of Litigation. Litigation involves many inherent risks. One such risk is that you may be held liable in a judgment for costs to your opponents should you not prevail in the lawsuit. These costs can be substantial, from several thousand dollars to tens of thousands of dollars, depending on the size and nature of the litigation. It is important that you keep this risk in mind when you decide to litigate and when you decide to continue a litigation when settlement opportunities arise.

**Dispute Resolution.** It is our sincere desire that there never be a dispute between us related to this engagement. Clear communication of our up front expectations, and truthful and accurate communications during the engagement, should preclude such problems. However, it is prudent for us to determine now how we wish to resolve any such dispute before it happens.

First and foremost, we both agree that if there is a frustration of our expectations under this agreement, we will make every reasonable attempt to talk through the problem with the other.

Fee Arbitration. If a frustration in expectation relates to the payment of attorney fees, we agree to use of the Mandatory Fee Arbitration procedures set forth in the California Business and Professions Code to resolve that dispute. That program is administered by the Orange County Bar Association. You may contact me or go directly to that organization to get all the relevant information you might need to commence a fee arbitration. This program relates only to the payment of fees. It is helpful if there is a dispute between us related to whether the Firm has earned some or all of its invoiced fees. It does not deal with a claim of legal malpractice.

**Binding Arbitration.** If a dispute arises wherein you believe the Firm has acted negligently and has caused you damages, we agree to submit that dispute to final binding

[CLIENT NAME] June 6, 2006 Page 5 of 6

arbitration. To be more specific, we agree that any claim arising out of the rendition or lack of rendition of services under this agreement, including claims of legal malpractice, will be determined by submission to final and binding arbitration, and not by a lawsuit or resort to court process (except as provided by law for judicial review or enforcement of arbitration proceedings). This includes any claim that any legal services rendered under this contract were unnecessary or unauthorized or were improperly, negligently or incompetently rendered. "Binding arbitration" means that we will not go to court, but instead will have our matter heard in a more streamlined, private process which is final, not subject to appeal (except under some very narrow exceptions related to the process itself), and usually quicker and less costly to both of us.

You and the Firm agree that by entering into this agreement, we are giving up our constitutional right to have any such dispute decided in a court of law before a jury, and instead we are accepting the use of binding arbitration. You may wish to seek outside advice or counsel concerning this procedure. You are free to reject binding arbitration at this time, or this arbitration agreement may be rescinded within 30 days from the date of your signature below by delivery of written notice to us. We agree the arbitrator will have the right to determine our rights according to the substantive laws of the state of California. The proceedings will be administered by JAMS (Orange County) in accordance with their then existing rules of practice and procedure.

This next sentence is required by law to be enlarged to make sure we understand that we are giving up important rights. BY SIGNING THIS CONTRACT WE ARE AGREEING TO HAVE ANY ISSUE OF LEGAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND WE ARE GIVING UP OUR RIGHT TO A JURY OR COURT TRIAL.

**Conclusion.** We apologize for the length of this letter agreement. We firmly believe that a thorough explanation of our rights, obligations and expectations are important to a good working relationship. By signing below, the Firm agrees to be bound by all of the terms contained herein, but only after you have signed in all designated places below indicating your agreement as well.

Please review this agreement carefully. Have it reviewed by other counsel if you wish. Then, when you have no questions or concerns about the meaning of the terms herein, and you agree to them, please sign and date where indicated below. This will form a binding agreement between us. Please forward the original agreement to us and we will keep it in your file.

We look forward to working with you. Thank you for your decision to trust the Firm with your important business matters.

#### YOUR FIRM NAME HERE

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[CLIENT NAME] June 6, 2006 Page 6 of 6

Date:

By:\_\_\_\_

By:\_

Your Name, Title

Date: \_\_\_\_\_

[CLIENT NAME]

## ADDENDUM "C"

#### **Email Disclaimer**

The information contained in this message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think or know you have received this email message in error, please notify the sender by reply email and delete the message an any attachments.

#### Website Disclaimer

The material contained on this website should not be construed as legal advice on any subject matter and is not a substitute for legal counseling. No recipient of content from this site, clients or otherwise, should act or refrain from acting based on information at this site. The content of this website comes "as-is" and its accuracy, completeness, or applicability is not guaranteed. ("Your Firm Name") expressly disclaims all liability in respect to actions taken or not taken based on any or all of the contents of this site.

Any transmission of information through ("Your Firm Name") website is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not rely upon any transmission of e-mail messages to the ("Your Firm Name") through this website to create an attorney-client relationship.

## ADDENDUM "D"

# OTHER INFORMATIVE INFORMATION

Printed from The State Bar of California website (www.calbar.ca.gov) on Thursday, June 1, 2006 Localion:

#### **Guidelines for Attorneys**

State Bar Rule of Professional Conduct 4-100 requires attorneys to deposit funds received or held for the benefit of clients in a trust account separate from the attorney's own funds. The Business & Professions Code in turn provides for such accounts to be interestbearing accounts. These guidelines for attorneys describe how to open and maintain client trust accounts.

#### **Client Trust Accounts**

Client funds that are nominal in amount or are on deposit for a short period of time are to be placed by each attorney or firm into a single unsegregated account on which the interest is paid to the State Bar. Each lawyer or firm should ordinarily have just one pooled account for small and short-term funds, as multiple accounts generate extra bank service charges and reduce funds available for free legal services. This account is referred to as an "IOLTA" (Interest on Lawyer Trust Accounts) account. (Business & Professions Codes Sections 6211(a))

Handbook on Client Trust
 Accounting for Attorneys

 Rule of Professional Conduct 4-100

Business & Professions
 Code Sections 6211(a) and
 6211(b)

 Business & Professions Code Section 6212

Banks Offering Favorable
 IOLTA Rates

#### **Opening the Account**

Give the bank the State Bar's taxpayer identification number (94-6001385) and tell them

the interest should be paid to the bar. The financial institution where you establish the account (see list of banks offering favorable interest rates) will send the interest to the State Bar. (Business & Professions Code Section 6212) if you or your bank have any questions regarding client trust accounts, contact the Legal Services Trust Fund Program at 415-538-2252 or e-mail trustfundprogram@calbar.ca.gov.

#### Notifying the State Bar

When you open or close an IOLTA Trust Account, send the following to the Legal Services Trust Fund Program, State Bar of California, P.O. Box 193866, San Francisco, California 94119-3886:

- a deposit slip or a voided blank check (marked "open" or "closed")
- your bar member number; or for law firms, attach a list of all the attorneys associated with the account and their bar member numbers
- a print-out of the Trust Account Information Report (optional)

#### **Determining Eligible Funds**

Use this pooled interest-bearing trust account for client funds unless it is practical to earn income for the client by holding the funds in an individual client account or otherwise accounting for them separately. Your banker or financial institution can help you evaluate and identify when it is possible to earn interest for the client, taking into account the amount of interest an individual client's funds must generate to be practical in light of the costs involved in earning and accounting for the interest. (Business & Professions Code Section 6211(b))

#### Additional Information

Download the Handbook on Client Trust Accounting for California Attorneys, or send a \$10 check for a bound copy to the State Bar of California, Attention: Handbook on Client Trust Accounting, 180 Howard Street, San Francisco, CA 94105. The handbook is a practical guide created to help attorneys comply with the record-keeping standards for client trust accounts. The handbook includes the standards and statutes relating to trust accounting, a step-by-step description of how to maintain a

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client trust account, and sample forms.

For general requirements regarding trust accounts and for record-keeping standards, see Rule of Professional Conduct 4-100. You may address questions about Rule 4-100 or other questions about ethics to the bar's Ethics Hotline at 1-800-2ETHICS (1-800-238-4427).

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Printed from The State Bar of California website (www.calbar.ca.gov) on Thursday, June 1, 2006 Localion:

#### Opening A Law Office

#### Order Online

Opening a Law Office: A Handbook for Starting Your Own Business, is written and published by the California Young Lawyers Association (CYLA) and the Continuing Education of the Bar (CEB).

The sixth edition of Opening a Law Office is an invaluable resource and available from the California Young Lawyers Association.

Concise and clear guidance is provided about:

- selecting the proper hardware, software and office equipment
- office management, timekeeping and billing
- effectively marketing your services
- financing your practice
- hiring good employees
- law office insurance
- client relations

In addition, Opening a Law Office contains checklists of essential procedures and tasks, sample forms, and appendices on building a law library, trust accounts, and further references.

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#### **Rules & Regulations**

#### SELECTED LEGAL PROVISIONS

Relating to the Practice of Law and The State Bar of California

- ٠
- Constitution of California (Relevant Provisions)
- California Rules of Professional Conduct
- The State Bar Act (Business & Professions Code sections 6000 et seq.)
- California Rules of Court
- Related Statutes Regarding Professional Conduct, Discipline of Attorneys and Duties of the State Bar of California
- Supreme Court Order Pursuant to Statutes 1981, Chapter 789
- Rules and Regulations Pertaining to Lawyer Referral Services
- MCLE Rules and Regulations
- Additional Information Concerning MCLE Rules and Regulations
- Pro Bono Resolution Adopted by the Board of Governors
- Publication 250 FAQs
- Article I, (Classes of Membership, Annual Membership Fees and Penalties), Rules and Regulations of The State Bar of California

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Public Services

Tel Law Speakers Bureau Lawyer Referral Elder Abuse Protection Judicial Evaluation Community Outreach Fee Arbitration Client Relations Pro Bono Activities Charitable Fund

Quick Access

Legal Links <u>Court Info</u> OCBA Homepage

#### **Mandatory Fee Arbitration**

The purpose of the Orange County Bar Association **Mandatory Fee Arbitration Program** is to resolve fee disputes between clients and attorneys. Clients and attorneys have the opportunity for a neutral arbitrator to decide the appropriate amount of attorney's fees through an informal, low cost proceeding.

An attorney/client fee dispute can be arbitrated if the attorney has an office in Orange County, or the majority of services were rendered in Orange County.

If you believe you have a fee dispute with an Orange County attorney, you may contact the OCBA Client Services Department at 949-440-6700 x153 or by <u>email</u>.

#### **Mandatory Fee Arbitration Forms and Documents**

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## Notice of Client's Right To Arbitration

Client's Name	Attorney's Name	· · · · · · · · · · · · · · · · · · ·
Client's Address	Attorney's Address	
You have an outstanding balance for fees and/or costs for pr	pfessional services in the amount c	of \$
charged to you in the matter of	·	
□ I have filed a lawsuit against you in the:		
	Court	Case No.
	Address	
□ I have filed an arbitration proceeding against you with the:		
	Agency	Case No.
	Address	

□ No lawsuit or arbitration proceeding has yet been filed but may be filed if we do not resolve this claim.

You have the right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of these fees or costs by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients.

You will LOSE YOUR RIGHT TO ARBITRATION UNDER THIS PROGRAM if:

- 1. YOU DO NOT FILE A WRITTEN APPLICATION FOR ARBITRATION WITH THE BAR ASSOCIATION WITHIN 30 DAYS FROM RECEIPT OF THIS NOTICE USING A FORM PROVIDED BY THE LOCAL BAR ASSOCIATION OR STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM; OR
- YOU RECEIVE THIS NOTICE AND THEN EITHER (1) ANSWER A COMPLAINT I HAVE FILED IN COURT; OR (2) FILE A RESPONSE TO ANY ARBITRATION PROCEEDING THAT I HAVE INITIATED FOR COLLECTION OF FEES, AND/OR COSTS, WITHOUT FIRST HAVING SERVED AND FILED A REQUEST FOR ARBITRATION UNDER THIS PROGRAM; OR
- 3. YOU FILE AN ACTION OR PLEADING IN ANY LAWSUIT WHICH SEEKS A COURT DECISION ON THIS DISPUTE OR WHICH SEEKS DAMAGES FOR ANY ALLEGED MALPRACTICE OR PROFESSIONAL MISCONDUCT.

I have the right to file a lawsuit against you if you give up your right to mandatory fee arbitration. If I have already filed a lawsuit or arbitration, you may have the lawsuit or arbitration postponed after you have filed an application for arbitration under this program.

I have determined that:

There is a local program which may have jurisdiction to hear this matter. The address of the arbitration program you should

contact is:

O.C. Bar Association Mandatory Fee Arbitration Program

Name of Program P.O. Box 6130		
Address Newport Beach	CA	92658
City (949) 440–6700	State	Zip Code
Telephone No	······	

There is no approved local program which has jurisdiction to hear this matter.

The State Bar of California will conduct fee arbitration (1) where there is no approved local program, (2) where there is a local program but it declines for any reason to hear your case, (3) where there is a local program and you wish non-binding arbitration of this dispute and the local program refuses to allow non-binding arbitration of your dispute, or (4) if you believe you cannot receive a fair hearing before the local bar named above. If you need assistance, please contact Mandatory Fee Arbitration, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, (415) 538-2020.

#### § 6044.5 Disclosure of Information

(a) When an investigation or formal proceeding concerns alleged misconduct which may subject a member to criminal prosecution for any felony, or any lesser crime committed during the course of the practice of law, or in any manner that the client of the member was a victim, or may subject the member to disciplinary charges in another jurisdiction, the State Bar shall disclose, in confidence, information not otherwise public under this chapter to the appropriate agency responsible for criminal or disciplinary enforcement or exchange that information with that agency.

(b) The Chief Trial Counsel or designee may disclose, in confidence, information not otherwise public under this chapter as follows:

- (1) To government agencies responsible for enforcement of civil and criminal laws or for professional licensing of individuals.
- (2) To members of the Judicial Nominees Evaluation Commission or a review committee thereof as to matters concerning nominees in any jurisdiction.

#### § 6068 Duties of Attorney

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United stated and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (c) To maintain inviolate the confidence, and at every peril to bimself or herself to preserve the secrets of his or her client.
- (1) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (b) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States of any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires the attorney to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorneys' practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory of disciplinary proceeding against him or her.

- (1) To comply with the requirements of Section 6002.1.
- (k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.
- (1) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.
- (m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.
- (n) To provide copies to the client of certain documents under time limits and as prescribed in a nule of professional conduct which the board shall adopt.
- (o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:
  - (1) The filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.
  - (2) The entry of judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.
  - (3) The imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).
  - (4) The bringing of an indictment or information charging a felony against the attorney.
  - (5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of any felony, or any misdemeanor committed in the course of the practice of law, or in any manner such that a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common-law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or any misdemeanor of that type.
- (6) The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.
- (7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.
- (8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.
- (9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may required by rule or regulation.
- (10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

§ 6068.11

- (a) The Legislature finds and declares that the opinion in State Farm Mutual Auto Insurance Company v. Federal Insurance Company (1999), 72 Cal. App. 4th 1422, raised issues concerning the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent the insured. These issues involve both the Rules of Professional Conduct for attorneys and procedural issues affecting the conduct of litigation.
- (b) The board in consultation with representatives of associations representing the defense bar, the plaintiffs bar, the insurance industry and the Judicial Council, shall conduct a study concerning the legal and professional responsibility issues that may arise as a result of the relationship between an attorney and an insurer when the attorney is retained by the insurer to represent an
- insured, and subsequently, the attorney is retained to represent a party against another party insured by the insurer. The board shall prepare a report that identifies and analyzes the issues and, if appropriate, provides recommendations for changes to the Rules of Professional Conduct and relevant statutes. The board shall submit the report to the Legislature and the Supreme Court of California on or before July 1, 2001.
- (c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

# The Top Ten Malpractice Traps and How to Avoid Them

**Trap #1: Missing Deadlines.** Calendaring errors remain a leading cause of malpractice claims. Common mistakes include data entry errors, failing to use file review dates, absence of a back-up calendar and procrastinating until the last minute to file documents. To avoid this trap, an office must have at its organizational core an office-wide calendar and practices in place regarding its use. The system should contain the following characteristics:

- Be easy to use, maintain and teach to new personnel
- Include some redundancy, either through multiple paper calendars or the computer
- Contain an off-site calendar backup in the event of a fire or other disaster
- Have the capacity to crosscheck between the master calendar and the back up calendar to catch calendaring errors
- Have at least one docket date for every open file to ensure that all files are reviewed regularly
- Include tracking procedures that enable the firm to identify who made any given entry
- Make all attorney and non-attorney staff accountable

A standard calendaring system sets forth all items to be calendared, the frequency of reminder dates, the applicable deadlines for the various types of cases the firm handles and the firm's own deadlines for events it considers critical. For example, a firm might require all lawsuits to be filed no later than three months prior to the running of the statute of limitations. When the office accepts a tort claim, for example, support staff knows that a 3-month date (which indicates the imminent running of the statute of limitations) must be calendared. Critical firm deadline dates of this type will dictate the calendar entries made by the staff. Of course, it is the attorney's responsibility to calculate those important dates, and it is recommended that the attorney place his or her initials on the file intake sheet to identify who is responsible for the calculating of a particular date.

Trap #2: Stress and Substance Abuse. It takes just one dysfunctional attorney to ruin a firm's reputation and add significantly to its malpractice claims history. All too often the problem is compounded by inaction on the part of the law firm. Certain practices can reduce the chances of encountering such a problem.

Improved Communications Among Firm Members Does your firm have an open door policy? Can problems be discussed confidentially within the confines of the firm? Too many attorneys today view partnership as a purely economic relationship and feel no sense of loyalty to one another. In this setting dysfunctional or troubled attorneys have no one in whom they can confide. Monthly meetings, sharing advice or insights on a matter and getting together in non-work settings can help build effective and satisfying working relationships.

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The Committee wishes to thank Mark C. S. Bassingthwaighte, J.D., Loss Control Specialist and Robert D. Reis, Risk Manager from Attorneys Liability Protection Society, A Mutual Risk Retention Group for their considerable contributions to this article's second edition. You may also consider appointing a fair-minded and well-respected partner as an ombudsman for intra-firm problems and conflicts. Sole practitioners can find this support by seeking out other lawyers similarly situated, though confidentiality concerns and other business and ethical constraints require caution in this type of a situation.

Workloads. Stress can push predisposed attorneys into clinical depression or cause other mental health problems, including anxiety disorders. Although it may be impossible to remove stress completely from the workplace, it is possible to manage and reduce the level of stress.

Does the firm measure attorney worth solely on billable hours or the number of open files being handled? While such a system may be necessary to some degree, it can not and should not be the sole measure of one's value. Caseloads should be reviewed periodically to ensure a fair division of labor. Reasonable limits should be placed on the number of files or cases that may be handled at one time.

Are firm members able to take personal time off without feeling guilty or without being penalized? Firm members should feel some flexibility insofar as being able to take the occasional hour or so for a child's school activity or to run a personal errand that cannot be handled after hours. Instituting a of policy requiring attorneys to take vacations away from town and away from files and clients can contribute significantly to maintaining morale and ensuring enthusiasm in the workplace.

Sensitivity and accommodation for the attorney who is dealing with the added stress of personal crises is mandatory. During this period, reduced workload or other adjustments should be made. Stress should not be ignored. Everyone has a breaking point.

Know the Signs of Substance Abuse and Depression. Symptoms of substance abuse include frequent Monday morning tardiness, missing deadlines, neglecting mail and phone calls and missing appointments. There is a slow but steady deterioration in work product and productivity and an increase in frequency of excuses in personal relationships. Apparent behavioral changes could include drinking, defiance, impatience, intolerance, unpredictability or impulsiveness.

Other apparent behavioral changes associated with depression include inappropriate anger (often in men), tearfulness, self-criticism, distractibility and lack of interest in pursuing activities that once brought pleasure, difficulty concentrating and forgetfulness.

Seek Help from Professionals in Cases of Mental Health Problems or Substance Abuse. Most attorneys acknowledge that substance abuse and mental health issues can increase tremendously the risk of a malpractice claim and can devastate families, professionals and entire social circles. Unfortunately, far fewer will take the risk to intervene and help a colleague find help unless or until the problem has reached crisis proportions. By the time that point is reached, the neglect, misconduct or mistake has occurred and the cost to the firm could be substantial. In the presence of indicia of mental health issues or substance abuse, one should be encouraged to seek professional help. These problems are treatable, particularly if recognized and dealt with at an early stage. For substance abuse issues, state bar

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committees are a good place to begin. Typically, they are a committed group of people who have faced similar challenges successfully.

**Trap #3: Poor Client Relations.** Every malpractice claim begins with a dissatisfied client. Poor client relations and conflicted working relationships can transpire into malpractice claims with amazing haste. Inadequate attorney-client communication usually is at the heart of the problem. Typical mistakes include failure to obtain client consent, failure to inform a client of a case development or failure to follow the client's instructions. Many client relationship errors can be avoided by adopting a simple, commonsense approach to working with clients.

- Explain clearly to each new client orally <u>and in writing</u> the purpose for which the firm was hired, the fee arrangements, the reporting and billing procedures and the client's obligations.
- Listen to the client. Clients may want to pursue non-litigation avenues. Time should be taken at the beginning of the attorney-client relationship to identify clearly the client's goals or objectives.
- Realistic client expectations should be encouraged. Clear and documented explanations about the services to be performed or not to be performed are crucial. Legal procedures should be explained in simple, clear language so the client understands what to expect from the representation and has a clear timetable in mind.
- Maintenance of good client communications requires the prompt return of all telephone calls, keeping appointment times with clients and not keeping them waiting, sending regular case status reports and reporting negative information promptly. If the client is copied with correspondence or pleadings, the client must be informed as to their meaning and purpose. Assignments should be completed on a timely basis. If an unforeseen delay arises, it should be explained and a revised expected completion date should be given. Clients should be billed regularly and all charges should be explained fully. Clients should be encouraged to provide ongoing feedback on the quality of the representation they are receiving.
- All discussions, recommendations and actions taken, including a decision not to accept a client, should be documented.
- Letters of closure should be used at the end of the representation to document what was accomplished.
- Support staff should be taught the importance of courtesy, timeliness, professionalism and confidentiality when dealing with clients. Staff provides the interface between attorneys and clients. If staff is depressed, overworked, feel taken for granted or dissatisfied generally, it is important to understand that negative messages, however unintended, are being sent to clients.

#### Trap # 4: Ineffective Client Screening

After being served with a malpractice action, attorneys will often mutter "I knew I shouldn't have taken on that client." These "problem" clients are often the result of ineffective client screening. Successful practitioners augment their "gut feelings" with standardized office-wide screening procedures. A firm-wide policy of screening each prospective client according to a predetermined set of standards is critical. Each member of the firm is responsible for the clients the other members bring to the firm. With a standardized and effective screening process, potential disaster clients may be identified and avoided. A set of screening questions subject to review and modification goes a long way toward weaning out undesirable clients. A periodic review of problem cases to decipher warning signs of potential danger also makes sense. Since screening needs vary greatly by practice area, it is wise to check with experienced and respected practitioners in the geographical area in which one practices to see what aids are being used and for what other practitioners are screening. It is also a good practice to analyze the office screening procedures periodically, perhaps annually, to see that they are netting matters and clients desired, match firm expertise and style and will be profitable for the firm.

• Do you have the time to take on the new case and give it the proper attention that the case deserves? If not, say no.

- Do you have the expertise necessary to handle the case? Don't dabble! There is no such thing as a simple will or a cut-and-dried personal injury case. If you are not prepared to handle the difficult cases in a given area of practice, do not accept the seemingly simple things. Often you fail to see where the problems are. Yes, you can develop the expertise given sufficient time, but keep in mind that sufficient time will be far more than meets the eye at first glance and the client will not be willing to pay for your education.
- If this is a contingency fee case, do you have adequate funds to take the case? You want to avoid being placed in the situation where case management decisions are being dictated by economics instead of by legal judgment.
- Can the client afford your services? If not, say no. A fee dispute is in the making if you accept a client who is on a different financial footing. Minimally, collection is likely to become an issue, and if you are compelled to collect the fee, the odds of facing a malpractice claim increase significantly.
- Is the prospective client a family member or friend? Don't be fooled. First, if the work is not satisfactory, favor or not, even the family member or friend will sue. Accepting work under this situation is foolhardy. Second, if you are unqualified to represent a stranger in a particular matter, likewise you are unqualified to represent a friend or family member. Don't be pushed into something you are uncomfortable handling.
- Has the prospective client brought you the matter at the eleventh hour? If so, say no. If you do not have adequate time to perform a thorough investigation, you run the risk of missing a possible claim, failing to identify a defendant or letting the statute of limitations run. You don't want to end up paying for your client's procrastination.
- Has the prospective client had several different attorneys? Heed the warning light! The client may wish to avoid paying fees, may be impossible to satisfy, may be bringing a case all others before you believed lacked merit or will be impossible to resolve satisfactorily.
- Does the prospective client behave irrationally or appear confrontational? If you are unable to work effectively with someone during the initial interview, it is unlikely to get better over time. The difficult client all too readily becomes the angry client who will not hesitate to bring a suit.

#### MALPRACTICE PREVENTION

• Does the client have unrealistic expectations? You cannot guarantee results nor obtain a million-dollar judgment on a simple slip and fall. Do not take on clients whose expectations are simply unobtainable.

#### Trap #5: Inadequate Research and Investigation

The ABA has reported that substantive errors account for over 46% of malpractice claims. Common errors include failure to know or properly apply the law, failure to know or ascertain a deadline, inadequate discovery or investigation and planning or procedural choice errors.

Many of these errors can be prevented through careful, methodical research and procedures. It is important to review carefully the work of all staff, including contract attorneys and other professionals. The attorney of record is responsible ultimately for the work of these individuals. Experts should be consulted if uncertainty about a point of law exists. Lawyers should take the time to study and keep abreast of new developments in the law and should check closed files in the face of new statutory and case law that might affect clients' positions and rights. Association with expert cocounsel on significant matters outside one's practice area is crucial.

As the law changes, the standard of care does not decrease. Lawyers must continue to study the law by reading, attending seminars, seeking expert consultation and by researching particular issues that need to be addressed by clients.

#### Trap #6: Conflicts of Interest and Conflicts of Matter

Conflicts of interest and conflicts of matter can arise from a variety of situations. Each firm must establish stringent procedures for identifying and resolving situations in which these unexpected conflicts may arise. Practitioners should be wary of these situations.

- Representation of two parties, such as a divorcing couple, an estate and its beneficiaries or a buyer and a seller who announce "we agreed to the property settlement and we just want you to write the agreement."
- Representation of opposing theories of law for different, but similarly situated clients, i.e. a "conflict of matter" situation.
- Representation of opposing sides of an issue, even though the clients are not involved with one another, such as Exxon and Greenpeace.
- Personal involvement in a client's business interests.
- Service as a director or officer of a client company.
- An unclear statement of non-representation in situations where a clear conflict of interest exists.
- Conflicts arising from law firm acquisitions and lateral hires.

Lawyers must be vigilant about the possibility of conflicts of interest and conflicts of matter in undertaking representation. The following guidelines offer some helpful hints.

- Establish a conflict system to disclose conflicts as early as possible.
- Avoid suing former clients.
- Take only one side of any case or transaction. Confirm this in writing.
- Avoid becoming a director, officer or shareholder of a corporation concurrent with acting as its lawyer. Reject offers of remuneration in the form of stock.
- Avoid joint representation in potential conflict situations if there is any risk of an actual conflict materializing.
- If any possibility of conflict exists, seek permission from each client to disclose your representation and its effect on all clients before accepting representation. Absent permission, withdrawal is the only option.
- If you intend to engage in a joint or multiple client representation, give full disclosure to all clients regarding potential and reasonably foreseeable conflicts of interest and their ramifications. Discuss the effect of both potential and actual conflicts upon your representation of all clients. Advise the multiple clients that there is no confidentiality between them on matters concerning the joint representation. Advise multiple clients to seek the advice of independent counsel on the issue of whether joint representation is appropriate. Obtain the written consent of each of the multiple clients after full disclosure and before continuing the representation.
- Strongly urge consultation with independent counsel in cases of actual conflict. Seriously consider not proceeding with representation if the clients refuse to consult with independent counsel regarding the issue of joint representation. Have independent counsel acknowledge in writing the fact of having been consulted with regard to a multiple representation situation.
- Do not work for a real estate commission, which is based on percentage, while being asked for your legal opinion regarding a transaction or project.
- Do not represent clients with potentially inconsistent defenses or differing liability in civil or criminal cases without written disclosures, as described above, and the clients' written consent. If their potential conflicts become actual conflicts, you cannot represent them jointly, even with their informed, written consent.

Memories alone are insufficient to record and check potential conflicts of interest and conflicts of matter. Law practices need systematized procedures for documenting and analyzing potential conflicts for every new client and new matter accepted by the firm. A two-part system is recommended.

The first part should provide for a method of matching names, which can be accomplished either manually or by computer. Large firms should have a computerized system. Additionally, firms with more than one office need a database with matters and names from all offices, as well as communications capability to access the entire database from any office. The database, whether consisting of index cards at the receptionist's desk or a computer program, should include many parties. The list found at the end of this chapter, developed by the Professional Liability Fund that insurers all Oregon attorneys, is the best quick reference discovered.

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#### MALPRACTICE PREVENTION

The second part should include a practice of circulating a "new matter memo" to all professionals and support staff whenever the firm accepts a new case. This serves as a good conflict of opposing theories check. The memo should include the following information: identification of all parties, identification of the intake attorney, all relevant administrative details, a statement of the case and a description of the work to be performed. In addition to serving as a further updated conflicts check, circulation of this information allows everyone in the office to pool resources and thus contribute to the efficient handling of the matter. It also serves as a warning against accepting a subsequent matter that would require advancing a theory or position that would be contrary to the new client's interests.

A current and complete database enables the firm to identify and advise clients of relevant changes in the law affecting their cases. Such a system also permits the firm to analyze the strengths and weaknesses of certain practice areas and to address them through education, improved planning and revised procedures.

It is important to remember that a conflicts-checking system is only as good as the people who use it. It must be used rigorously and consistently to be effective. The database must be checked and updated every time a new case is accepted. New matter memos must be circulated and returned to the intake attorney in a prompt fashion and must have affirmative documentation confirming their review by all attorneys and staff.

### Trap #7: Inappropriate Involvement in Client Interests

A lawyer's inappropriate involvement in a client's entrepreneurial interests raises conflict of interest issues and is increasingly a significant basis for legal malpractice. This involvement can take several forms.

- Acting as director or officer of a client company.
- Investing in client securities.
- Becoming involved in one-to-one business deals with a client.
- Accepting stock from a client in lieu of a cash fee.
- Agreeing to contingent cash fees.
- Soliciting other investors on behalf of a client's enterprise.

Problems caused by these activities are many, including: (1) inadequate or nonexistent directors' and officers' insurance for the lawyer acting both as outside counsel and director of a company; (2) vicatious liability of the law firm for the acts of a firm member serving as a director or officer of a client company; (3) higher standard of care and due diligence imposed under federal securities laws on a director who is also the company's lawyer, as compared to a director who is not the company's lawyer; (4) weakened defense to a malpractice claim by third parties in cases where a lawyer is also a director of the company and (5) serious conflict-of-interest issues arising out of a lawyer or law firm's personal involvement or investment in a client's business interests.

Robert E. O'Malley, vice chairman of the Board and Loss Prevention Counsel for Attorneys' Liability Assurance Society, suggests six commandments for lawyer involvement in client interests.

<sup>16</sup>DESK GUIDE LEGAL MALPRACTICE

- Do not permit any partner or employee of the law firm to serve as chair, president, chief executive officer, chief operating officer, chief financial officer or general partner of any publicly held client.
- Do not permit any partner or employee of the law firm to be a director or officer of a start-up company that is financing itself with an initial public offering where the law firm is securities counsel to the company or the underwriter.
- If the law firm is acting as securities counsel to the issuer or the underwriter in an initial public offering under the Security Act of 1933, neither the firm itself nor any partner or employee of the firm should invest in the underwriter's original allotment (as distinguished from the aftermarket).
  - If the law firm is acting as securities counsel to the issuer in any public offering under the Security Act of 1933, the firm should not agree to accept any part of the stock in lieu of a cash fee.
  - If the law firm, partner or employee of the firm owns securities of a company that is about to make an initial public offering, the law firm should not act as securities counsel to either the issuer or the underwriter, unless such securities are redeemed prior to the offering or are "locked up," so that there is no possibility of a quick windfall profit for the firm or any of its partners or employees as a result of the public offering.
- If the law firm is acting as securities counsel to the issuer or the underwriter in any public offering under the Security Act of 1933, the firm should avoid any advance agreement whereby a substantial portion of its fee is explicitly contingent on the marketing of the offering.

### Trap #8: Lack of Adequate Documentation of Work

Insufficient documentation of work accounts for many of the client relations and missed-deadline errors associated with legal malpractice claims. Simple office procedures can prevent many of these errors from occurring. Each firm or practice should have in place a system for checking the accuracy and content of all outgoing documents, such as letters, briefs, contracts and motions. The system should include provisions for cross-checking of these matters by more than one person.

Good file management should include maintaining a file on all documents prepared or received by the lawyer for each client matter. Telephone messages and memoranda should also be logged for future reference. Daily filing procedures help to ensure that information is not lost and is available when needed. Office files should be reviewed regularly to avoid missing deadlines and to ensure that the system is performing as intended.

As the practice of law keeps pace with our evolving paperless world, the importance of administrative details - the seemingly menial side of a law practice - becomes more important, not less. Consideration of how electronic files will be stored, backed up, kept secure and retrieved is essential to an efficient office operation. Consciously designing a uniform computer filing system, reviewing it regularly and updating it often to assure that files are maintained confidentially and retrieved easily, is critical. Making certain there is a relatively current back up copy of all data and programs, which is

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kept at all times in a secure place outside the office, is mandatory to this evolving paperless computer driven world. Adhering to these measures will permit prompt resumption of work should a catastrophe occur, and will assure attorneys' compliance with their obligations to safeguard client information.

### Trap #9: Zealous Efforts to Collect a Fee

Fee disputes are at the heart of a significant percentage of all legal malpractice claims brought against attorneys each year. Typically, the attorney sues the client for unpaid fees and then is countersued for legal malpractice. In some cases, merely mailing a final bill triggers a threat of legal malpractice. In order to avoid fee disputes, use of the following rules in billing and collecting fees for legal services is important.

Don't accept clients who cannot afford your legal services: It is a lose/lose situation to take on a client who is overly concerned about fees and who ultimately will not be able to pay his or her legal bill. If you represent such clients, you will be torn between putting in the required number of hours and minimizing the final costs. Learn to say "no" to these clients.

Written fee arrangements: Consider documenting fees and the scope of work to be done in all matters. Doing work without a written agreement should be extremely rare. Each engagement letter or contingent fee agreement should contain a clear explanation of the legal fees that will be charged for the work to be performed. Any restriction on the scope of work must be detailed in this agreement. In addition, be specific and itemize the types of out-of-pocket expenses for which the client will be responsible, such as filing fees, court costs, expert witness fees, photocopying charges and computer research. Clients are often astonished by the amount of out-of-pocket expenses incurred on their behalf. Finally, it is inadvisable to adopt a new fee structure or draft a subsequent fee agreement while the client's matter is pending.

Bill on a monthly basis: Attorneys who charge an hourly fee should always bill the client on at least a monthly basis, unless the client has specifically requested another arrangement. Avoid billing the client at the project's completion, unless the total cost of the representation has been agreed upon in advance. The key to hourly billing is to send bills and collect your fees on a frequent basis in order to avoid large, unexpected bills. For improved client communication and satisfaction, it is good practice to send a zero balance bill on occasion, along with a note indicating why no charges were made in a particular month, and advising that you are proceeding on the case.

Detailed billing statements: Provide detailed billing statements that describe the work performed by each attorney or paralegal on a daily basis and how long it took. Entries such as 20 hours for "research" are unacceptable. Rather, the entry should read "research state case law on piercing the corporate veil."

Daily time entries: Every attorney and paralegal that bills on an hourly basis must record his or her time on a daily basis. Keep a time sheet or pad of paper next to your desk on which you record your work or make regular entries in the computerized timekeeping system. It has been proven that attorneys fail to record all of their time more often when regular timekeeping is not required. Require each attorney to submit his or her time sheets for the preceding week every Monday morning.

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**Review all bills:** The attorney responsible for the case or matter should review each bill for errors before it is mailed to the client. In addition to looking for errors, an ongoing assessment of the charges and the value received for the work should be made. If the time expended was greater than what would have been spent by an attorney with experience in the area, consider writing off some of the time.

**Copy the client on all meaningful correspondence and other materials relating to the client's matter:** Ask yourself who is more likely to pay his or her bill? Choice A: the client who has not received a single sheet of paper from the attorney in three months. Choice B: the client who receives informational copies from the attorney on a regular basis. It is equally important, however, to avoid forwarding a mass of paper to the client that confuses rather than communicates. Be sure the office and the client understand from the outset what communication is necessary and desirable. Follow the agreed upon plan, straying only to send more not less, and never allowing a copy to go to the client that is not explained by prior developments or an attached note.

**Take prompt action on accounts in arrears:** This is the single biggest mistake that attorneys make with respect to fee disputes. Most attorneys joined the legal profession in order to practice law, not to collect delinquent fees. Unfortunately, the client who cannot pay a fee today is not likely to pay it tomorrow. The key to being paid is no secret. The key is doing the unpleasant, that is, working on past due bills early and with conviction.

First, the firm's partners should review all past due accounts on a monthly basis. Be sure that engagement letters and contracts of employment state the consequences to the client for failing to stay current with the legal fees, such as withdrawal conditions. Next, the partner responsible for a matter in arrears should contact the client and inform him or her that the firm will withdraw from the matter or enforce the other stated conditions if the past due fees are not paid within a stated grace period. Although courts place many restrictions on withdrawal, the vast majority of clients with fee payment problems who start off paying slowly become even slower at time goes on. Exercising the firm's withdrawal or other options early in the matter is far more likely to produce the desired results.

Beware of clients who promise you money "next month." It usually does not materialize. The moral of the story is that it is better to withdraw and cut your losses when you are owed \$1,000 than wait in hopes of payment only to find yourself suing later to collect a \$10,000 arrearage.

Some firms have begun to accept credit cards for fees. This may be a good option but should be examined carefully. Among other concerns, there is the need to account for the issuing bank's fees. For example, if an advance for fees is charged to a credit card and the credit is given to the client by depositing it into the client trust fund, the trust fund must equal the gross amount of the card charge, not the net you will receive. In some cases this will necessitate a deposit in addition to what is received on the account from the bank.

**Never sue for fees:** Establish a strict policy against suing for fees. If you cannot work out a realistic **payment** plan with the client, consider other alternatives such as arbitration or mediation. If you are tempted to sue for fees, consider this: the counterclaim for legal malpractice usually seeks an amount far in excess of the legal fees in dispute. In a recent case, a sole practitioner sued his client for \$9,000 in legal fees and received a counterclaim for an amount in excess of \$250,000. In the vast majority of these cases, the attorney ends up dropping his fee suit to get rid of the malpractice claim.

### MALPRACTICE PREVENTION

**Collect retainers:** If you are having difficulty collecting fees on a regular basis, require a retainer fee up front. If the client takes his or her business elsewhere because you were realistic in setting the fee and in asking for a significant percentage of the fee as a retainer, this may be a client you are better off not having. The area with the largest accounts receivables is family law. The family law attorneys who are most successful in being paid promptly have well-crafted retainer agreements which require the client to maintain a certain amount on deposit and allow the attorney to withdraw if fees are in arrears.

Have another attorney do a thorough, objective file review. There are times when, regardless of having obtained a retainer up front, an increasing number of unforeseen hours is spent on a case that outstrips the initial retainer funds. If this occurs, and even if the client has no intention of paying, it is a good idea to have an independent attorney (preferably a senior member of the firm or a member of the local bar skilled in the practice area and in duties owed clients) review the case to assess whether due diligence was performed. Once a client is in your pocket for a significant sum, it is nearly impossible to be objective about the file and the work that you have done for that client.

**Call the client:** Far more success results from personal telephone calls from the attorney to the client than from letters from the accounting department or collection agency. Even if the client steadfastly refuses to pay the bill, at least you have made a good faith effort to collect and if there is any client dissatisfaction, most likely your conversation has yielded that information. Keeping in mind that the precipitating factor for a professional liability claim is the perception of the client more than the reality of the facts, information from the call may provide a good indication as to whether further collection efforts are warranted.

If you decide to pursue collection activity, never do this work yourself: One of the most important services provided a client in an attorney-client relationship is the objectivity of a knowledgeable third party whose goal it is to protect his or her client's interests. Avail yourself of the benefits of an attorney-client fee dispute specialist who can be objective and mediate concerns that may arise.

### Trap #10: Unwillingness to Believe You May be Sued for Malpractice

In spite of all the publicity that legal malpractice claims have received in the past few years, many attorneys believe erroneously that either because they perform adequately for their clients, or they know their clients so well, they will never be the targets of a malpractice claim. Trends in the frequency and dollar value of claims suggest otherwise. At present attorneys in private practice have between a 4 percent and 17 percent chance of being sued for malpractice each year depending on the jurisdiction and the nature of their practices.

As the law becomes more complex, the standard of care does not decrease. Lawyers must continue to study the law through reading, attending CLE seminars, consulting with experts on difficult legal issues and researching issues that need to be addressed by their clients.

While you may be one of the lucky ones who are not targeted for malpractice during your career, you cannot count on it. The key to minimizing your risk is to be acutely aware of the malpractice exposure of each and every case you take on. Only by recognizing your malpractice risk and by implementing effective prevention procedures will you lessen the chances of becoming a malpractice statistic.

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# BRIDGING THE GAP

## THE ALLEN E. BROUSSARD PANEL ON PROFESSIONALISM & CIVILITY

Sponsored by The Supreme Court of California The State Bar of California The Judicial Council of California

## THE ALLEN E. BROUSSARD PRESENTATION ON PROFESSIONALISM AND CIVILITY

Sponsored by The Supreme Court of California The State Bar of California The Judicial Council of California

### ALLEN E. BROUSSARD Associate Justice of the Supreme Court of California 1981 – 1991

Allen E. Broussard was the second African-American to be appointed to the California high court. In a legal career that spanned over 40 years, including over 27 years on the bench, Justice Broussard was known as a lawyer of great personal integrity, dedicated to the law and with a deep sense of fairness. He was also known as a person of great warmth and humor, who generously gave of his time to others.

He was a role-model who showed the way for many people of color to succeed, despite discrimination, and he never stopped working to make this society a better one. He served as mentor to many who have become leaders in today's society. By who he was as a person and by his actions as a lawyer and jurist, he embodied the highest standards of the legal profession -- standards that all lawyers should aspire to.

In recognition of his dedication to the law, commitment to improving society, his unflagging sense of fairness, integrity, and courtesy, this presentation of professionalism and civility is dedicated in honor and to the memory of Allen E. Broussard These hypotheticals are intended to bring out the conflicts that lawyers face in day-to-day practice in balancing their obligations to the courts and the legal system generally, to their clients, to society, and to themselves. They have been drafted to deal with issues and dilemmas that are not covered by any Rule of Professional Conduct. They are also designed to be ambiguous with no "right" answer or response. It is expected that during the course of discussion, there will be a range of responses and even completely opposite viewpoints by highly ethical and professional lawyers and jurists.

### Hypothetical 1

Opposing counsel notices your client for a deposition to be taken a couple of days before the time period for discovery closes. There is a technical, but fatal flaw to the deposition notice. Your client is an original party to the proceeding and opposing counsel has been involved since the beginning of the suit. What should you do?

Variation 1: Your client is an original party to the proceeding but opposing counsel has just been brought into the case.

Variation 2: Your client was brought into this lawsuit six months ago

### **NOTES**

### Hypothetical 2

In preparing to depose the opposing party, you discover that the party is having an extramarital affair. The fact is not relevant to your client's case but would be personally very damaging to the opposing party. What should you do? Should it matter how you obtained the information? Should it matter if the opposing party would agree to a settlement more favorable to your client to avoid disclosure of the information?

### **NOTES**

### Hypothetical 3

Opposing counsel is a well-respected member of the local legal community. Opposing counsel, already active in the community, has become even more involved in various local bar and community activities. You have heard rumors that opposing counsel is seeking a prestigious appointment. You have noticed that recently opposing counsel has not been attentive to the details of your case and this is giving your client an advantage. What should you do?

- Variation 1: Opposing counsel has recently acted in a manner which makes you suspect alcohol or drug abuse. At the same time, you notice that the quality of legal work has declined.
- Variation 2: Opposing counsel has a reputation in local legal community for alcohol abuse. Opposing counsel has recently offered to settle a case on terms that are extremely favorable to your client and detrimental to the opposing party.
- Variation 3: You have heard rumors that opposing counsel is having some personal problems. At the same time, you notice that the quality of legal work has declined.

### **NOTES**

### Hypothetical 4

You have a client who has instructed you not to "give an inch" in the lawsuit where the relationship between the parties has become acrimonious. You have a summary judgment motion on calendar which your client insists on being present for. Opposing counsel calls to request a continuance so that he may attend his child's school play. If the motions is continued, it will take at least 60 days to re-calendar. If the motion is not continued opposing counsel will have to either send a less experienced substitute or miss the child's school play. What should you do? Should it matter if the child has serious, possibly terminal, health problems and does not usually participate in school activities?

Variation 1:	Suppose opposing counsel requests a continuance so that she may be present during her child's elective surgery?
Variation 2:	Suppose opposing counsel requests a continuance to attend a once-in-a- lifetime event? (The Superbowl, The Masters at Augusta, a Presidential Inauguration, oral argument before the Supreme Court, parent's 50 <sup>th</sup>

wedding anniversary, a high school or college graduation, Nobel prize ceremony, or whatever else may be important in your life.)

### <u>NOTES</u>

### Hypothetical 5

In reviewing petitioner's brief before drafting your reply brief, you notice that the petitioner's counsel has failed to cite a leading case in support of petitioner's position. You have already been drafting some arguments to distinguish this case from the instant matter and it is your opinion that without citing this case, petitioner's position is greatly weakened. You are confident that opposing counsel will not discover this case if you do not mention it. What should you do?

Variation 1:	Suppose that your case is a case of first impression in your jurisdiction and
	the leading case is from another jurisdiction.

Variation 2: Suppose you just read about the leading case in this morning's advance sheet while waiting for the matter to be heard.

### **NOTES**

### Hypothetical 6

During opposing counsel's deposition of your client, counsel directs several personal remarks to you which, in your opinion, are intended to belittle your legal skills in the eyes of your client. What should you do?

- Variation 1: Suppose you are representing one of several parties on one side and you notice that co-counsel is doing this to opposing counsel.
- Variation 2: Suppose you are one of several lawyers present and you notice that one of the lawyers makes denigrating comments about another lawyers (pick one or more): race, ethnicity, gender, sexual preference, religious beliefs, or disability.

### <u>NOTES</u>

### Hypothetical 7

You have personal knowledge that a local judge before whom you regularly appear is having a secret intimate relationship with a lawyer who also regularly appears before that judge, sometimes opposing you. What should you do?

### <u>NOTES</u>

### Hypothetical 8

During discussion of a legal matter on which a client is seeking advice, the client tells you various unrelated facts including the fact that the client is on probation for passing bad checks, the name of the client's probation officer, and that a probation violation would lead to time in prison. The client pays you with a check drawn on an account that was closed two years ago. What should you do?

### <u>NOTES</u>

The hypothetical presents the opportunity to discuss the distinction between the professional obligation to maintain client confidences and the evidentiary concept of privilege.

Business and Professions Code §6068 (e)

### Hypothetical 9

You have agreed to draft a will and a complicated estate plan for a client. You quote the client a flat \$1500 fee for the whole "package" instead of an hourly rate. In arriving at the quote, you took into account several factors, but the primary consideration was that it would probably take ten hours to actually do the work. The client pays in full in advance.

Just as you are about to get started, you learn that another lawyer in the office has just finished putting together a will and estate plan for one of his clients who is in almost exactly the same position as your client. Consequently, your work on the case will now only take a couple of hours, at most, to complete. What should you do?

### **NOTES**

### Hypothetical 10

You are local counsel working with an out-of-state lead counsel. Opposing counsel is also local. At a recent hearing, the court instructed the parties to negotiate protective orders; if the parties could not agree among themselves, the court would then make its own orders.

Late in the afternoon on the day before Thanksgiving, you receive a call from opposing counsel to talk about proposed protective orders. Lead counsel's office has already closed for the day because they are in another time zone. You ask opposing counsel to discuss the protective orders with lead counsel. Opposing counsel then makes a remark about "refusing to negotiate."

On Monday morning, you receive notice of motion from opposing counsel requesting the court to issue protective orders on the basis that you refuse to negotiate. What should you do?

### **NOTES**

### Hypothetical 11

You are waiting in the back of the courtroom for the judge to sign an ex parte order. The judge recesses a pending trial for 30 minutes to deal with your matter and another case. The judge calls counsel in the other case into her chambers first.

Lawyer One in the pending trial leaves the courtroom. Only you and Lawyer Two are left. You observe Lawyer Two leafing through papers on counsel's table.

Lawyer One returns at the same time that the courtroom clerk motions you to come forward for the signed order. Just before you leave, the judge takes the bench and it is at that moment that you realize Lawyer Two was looking through papers on Lawyer One's table. What should you do?

Variation 1:	Suppose Lawyer Two was looking through a briefcase.
Variation 2:	Suppose the courtroom had been evacuated for an emergency and Lawyer Two and you were the first people back in.

### **NOTES**

### Hypothetical 12

About 25 percent of your income comes from defending clients in one industry in a particular type of liability action. You have been reading about the development of a new line of case law upholding some innovative defense arguments in a related industry. You think that if the courts would accept this line of defense in your client's industry, it would virtually eliminate the type of liability action you have been defending.

Variation 1: S	Suppose this new	defense i	in based	upon	proposed	legislation.
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- Variation 2: Suppose that instead of eliminating the particular liability action, it would make it more difficult to maintain thereby reducing the number of such cases by 70 percent.
- Variation 3: Suppose that you are asked to comment on proposed procedural changes that would greatly reduce the need for counsel in defending this particular type of action.

### **NOTES**

### Hypothetical 13

A potential client consults you about getting out of a contract because the client can now negotiate a better deal elsewhere. The other side has been substantially complying, although, there have been a couple of technical breaches that have not materially affected the potential client. What should you do? Should your answer depend upon whether this potential client can be the source of significant future work as well as referrals?

### **NOTES**

### Hypothetical 14

Your client has admitted committing a crime to you. During the course of the crime, the victim was struck on the head and suffered a concussion. The victim, who has identified your client as a perpetrator, mistakenly believes that the crime occurred at a time when your client was playing cards with three other people. These people are credible and willing witnesses.

Your client will not be testifying at trial. What should you do?

### **NOTES**

# BRIDGING THE GAP

# FAMILY LAW

### **Bridging the Gap**

### **Family Law Outline**

### **Introduction**

- WELCOME to FAMILY LAW
- FAMILY LAW is both rewarding and challenging! Why?
- The legal issues and emotions will touch the heart and soul of your client and affect what your client values most: His or her
  - o Children,
  - Family residence
  - o Income and
  - o Savings
- Your client is usually suffering appearing and acting at his or her worst often angry, and during this dark time, seeks out your help:
  - You're the doctor making a house call on the lion with a sore tooth you are there to help, .....but be careful
- And despite the challenges at and professional risks, the work is rewarding
  - You are helping a client who is suffering;
  - o you are providing a needed service;
  - You're not representing an institution you're in the people business
    - If you don't have the heart for it, this is not your practice area
  - Many run from the practice area and maybe you should too, and maybe not.
  - Yet, years from now, you may not recall your client or her matter, but she will recall you and the minute to minute experience of the litigation
    - The litigation and process is life changing
- History Of Divorce:
  - Before 1000 ad, the jurisdiction of divorce cases was committed to the ecclesiastical courts.
  - Beginning during the reign of William the Conqueror in about 1050 ad, the church and the lay courts began to separate.
    - And over time the courts and not the church resolved matrimonial cases.
    - And, fault finding was prevalent in the process.
  - Fast forward to 1970, and in most states, fault finding was on the decline and California lead the nation to a "no fault" system
    - Today, in California, the sole grounds for divorce are
      - irreconcilable differences
      - or incurable insanity.
    - Note: divorce = disso explain
  - What ever your choice of career, what ever the nature of your practice, I guarantee you this: very soon, a friend, neighbor or relative

will call you and ask you about a FAMILY LAW matter - it is unavoidable.

- Reason, FAMILY LAW touches most of us.
  - We all have a close friend, or family member who has experienced divorce or a child support issue
  - And the FAMILY LAW biz grows.
  - Today, FAMILY LAW not only includes divorcing partners, but includes litigation between a growing population of
    - unmarried parents and
    - same relationships
      - Issues include paternity
      - Property disputes
      - Support
  - Stats: 50% of all relationships will fail and at least some issue will be litigated in court.
    - Marriage begins with a license state permission to get married, and
    - Ends by means of death or court process.
    - There is lots of FAMILY LAW business!

### The Issues in a typical FAMILY LAW case

- Family law is a huge onion with many layers
  - o Status
  - o Support
  - Custody and visitation w/UCCJEA issues
  - o Property
    - CP or characterization issues
    - Division of asset and debt issues
    - Fiduciary issues
  - o Attorney Fees
  - Other areas
    - Domestic Violence
    - Paternity
    - Enforcement
  - o Cross Over Issues Involving
    - Real Estate
    - Bankruptcy
    - Estate planning
    - Tax law
    - Immigration
    - Criminal law.
- Types of FAMILY LAW Cases
  - Separation
  - Dissolution
  - Annulment –

- very rare never a valid marriage, grounds incestuous or bigamous or "void" because force, fraud, or physical or mental incapacity or age
- Paternity
- Domestic Violence
- FAMILY LAW DCSS
- Other FAMILY LAW filings; usually visitation disputes between un-married parents
- A contact sport Parties were former intimate partners changes how clients approach the litigation – its not always about the money (retribution, validation of victim status, proving fault – "other below the line issues"
  - Lots of emotions in play
    - Anger
    - Sorrow
    - Revenge
    - Depression
    - Feeling like a victim
    - Sadness
    - •

### FAMILY LAW Court is a court of equity

FAMILY LAW is civil litigation and the substantive controlling law is found in the FAMILY LAW Code, one of 26 codes, plus the CCP and case law

- Lots of important cases
- 5 Times the number of major cases vs other practice areas Yet, FAMILY LAW courts are courts of equity – what's that.
- Equity means
  - o fairness, justness and right dealing.
    - The rule of doing to all others as we desire them to do to us. To render every man his due.
    - Grounded upon the precepts of the consciousness, perhaps not otherwise sanctioned under positive law.
    - Equity = Equal and impartial justice as between two persons.
- FAMILY LAW judge has a lot of discretion to make an order or ruling grounded upon equity, unless the topic or issue is preempted by a rule of law
  - o **Examples** 
    - Initial custody orders
    - Division of property
- Few appeals because:
  - o Costs
  - Most parties SRL (self-represented litigants)
  - o On appeal, standard of review high, abuse of discretion
  - o 99.9% of all family law decisions at the trial court level become final,

### FAMILY LAW Litigation Process – Compare to civil fast track

Civil "Fast Track" litigation has lots of court oversight

- Civil ( a PI case):
  - Remedy Money based on fault finding
  - Pleadings (Complaint, Answer)
  - o Challenges
    - Demurrer
      - MTS
      - MSJ
  - Discovery big emphasis
    - Lots of gamesmanship
    - "Catch me if you can"
    - No affirmative duty to disclose
    - Hope the other side does not ask the right questions
  - o Early Status Conf
    - Case management by judge
  - Mandatory Arbitration
  - o TSC
  - o MSC
  - Trial one big event and a final judgment
  - Post Trial motions
  - o Appeal
  - Lots of case management fast track rules
- FAMILY LAW Litigation
  - Remedies no damages, restitution or injunctive relief relief not grounded on proof of liability or Fault – Instead, remedies revolve around un-winding a partnership between two intimate partners: They want:
    - single status,
    - division of property,
    - custody and visitation,
    - support,
    - AF.
  - Goal is not to punish or rehabilitate or deter, not to keep public safe.
    - Instead, goal is to do substantial equity amongst the parties and make orders in the BIC and generally un-wind the partnership.
  - Pleadings (Petition Response) Lots of forms
    - Petitioner serves respondent w/
      - Summons
      - Petition (attachments re: property)
      - Custody Declaration (if kids)
      - Order to Show Cause (for quick court hearing)

- Declaration re: Related Cases (OCSC form)
- Respondent files
  - Response
  - Custody Declaration
  - Responsive Declaration (to OSC)
- Duty to disclose HUGE!
  - PPD
  - Fiduciary Duties
  - Duty to update
  - Penalties for breach
- NO demurs or challenges to pleadings
- o No MSJ
- No court oversight over pace of litigation (but that's changing!)
- No fast track
- Either party can see *pendent elite* orders
  - Support
  - Exclusive use of house or car
  - Initial custody or visitation
  - Attorney's Fees
- o Bifurcation of status (but be careful of new requirements)
- Bifurcation of Issues
  - Mini trials on issues
    - Date of Separation
    - Valuation
    - Custody and Visitation
    - Support
- Partial Judgment
- Trial on Remaining/Reserved issues
- No jury trial
- Final Judgment Is it over???? No!
- Post judgment modifications
  - Support
  - Custody
  - Omitted assets
- Discovery tools same Civil: Interrogs, Doc Production, Notice to Appear, Requests for Admission, Independent Medical Exams
- Burden of Proof changes Ev. Code §500
- o No fault finding
- Limited Representation
- Few Statute of Limitation rules
- o No jury trail
- One judge per family.
- No Constitutional protections:
  - no right to counsel,
  - no jury trial,

- no speedy trial and
- no 5th amendment right.
- Few S/L rules
  - Judgments: can be modified big business
- Driven by presumptions lots of them
- OSCs = Mini trials
- Load of discretion driven my equities
- Issues often decided with out testimony, and stipulations
- Attorneys drive the pace of the litigation
- Continuances may be good.
- Presumptions: "A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. Two kinds: rebut table and conclusive

Some presumptions

- 1. Long term marriage
- 2. Child support guidelines presumed correct
- 3. Need for spousal support reduced upon ex co-habiting with new partner.
  - 4. CP:
  - The "General Presumption": All property acquired by either spouse during marriage, prior to separation, except that acquired by gift, bequest or devise, is presumed to be community property.
  - Conversely, property acquired prior to marriage or while the parties are "living separate and apart" is presumed to be the separate property of the acquiring party.
  - In any transaction between spouses in which one gains an advantage over the other, the transaction is presumed to be the product of undue influence or coercion.
  - Execution of a premarital agreement is presumed to be involuntary if the party against enforcement is being sought did not have independent counsel or, if after being advised of the right to independent counsel, did not waive that right in a separate writing.
  - FC §7540 The child of a wife cohabiting with her husband, who is not impotent or sterile, is "conclusively" presumed to be the child of the marriage. This "conclusive" presumption can be overcome by blood test evidence to the contrary.

### The Court System

- FAMILY LAW Panel State
  - o 17 bench officers
  - 8 commissioners 3 child support commissioners
  - o 9 judges
    - State wide 1600+ trial judges and 400+ commissioners
    - OC = 109 judges and 34 commissioners
    - What's a commissioner.

- Stipulation process
- Why not stip?
- If no stip, what then?
- o LJC and CJC courtrooms
- o Direct calendaring one judge one family
  - AB 1058/DCSS Cases (FC §4250)

### The Practice of FAMILY LAW – What's it Like

- Describe the FAMILY LAW Bar
  - o Solo vs Firm
    - Salaries for new attys
    - Job opportunities
- Most FAMILY LAW Specialize why
- Describe the Solo Practice
  - Use of Paralegals
    - o Equipment
      - Office
      - Cell/pager
    - Billing rate for atty
    - o Retainers
    - o Insurance
    - o Billing rate for paralegal
      - Paralegal salaries
    - Tips for starting out
      - Client selection
      - Client control
      - Network/involvement

### <u>Clients – You got to love em or leave em to someone else</u>

- o The client most are presenting at their worst
- Know when to leave them
- What is your role? Attorney, friend, shrink?
- Some things to notice:
  - Why does your client hold on to anger, and re-cycle anger and hurt feelings.
  - Why is your client unwilling to let go and move on.
  - Is this good for business or not....?
    - Why some clients hold on to anger
    - Pride blind to our own mistakes
    - The OP is totally responsible for my feelings. "He made me angry." A mistaken notion. You see, other people are responsible for their actions; but ultimately, in life, we must be responsible for our feelings, at least what we choose to do with our feelings. You see, if you

make other people responsible for your feelings, then who is in control ...certainly not you.

- To move on is to admit defeat or condone or to minimize what the other person has done. "I've got to hold onto this long enough to teach him a lesson."
- Consider:
  - Harboring resentment is a heavy burden to carry in life it can weigh you down while the OP is oblivious to the turmoil going on inside of you; right?
  - Holding on to anger is like letting someone live in your brain rent free
  - Holding onto anger is like holding onto burning embers that you want to throw at someone; but all the while the embers are burning you.
  - Holding on to anger is like chasing after the poisonous snake that bites us. After the bit, does it make sense to pursue the snake, only to drive the poison through our entire system? It is far better to forget the snake and take measures immediately to get the poison out.
- o Discuss reconciliation? Yes
  - not a marriage counselor or "Dear Abby"... but
  - Going forward should be informed and determined
  - No refunds for a patched up relationship
  - Judge will make the same inquiry

Tip: Skilled FAMILY LAW lawyers are problem solvers and where possible, therapeutic in their approach. To help their client move on. But, a lot like feeding the lion – careful you do not become lunch.

Tips for handling FAMILY LAW clients

- Set boundaries & limits
- Don't personalize their position
- Know the details of the case (kids' names, schools, etc.)

### **Dealing with Judges**

Some tips:

- 1. Remember, a judge has lots of discretion:
- 2. Forget "With all due respect"
- 3. The court clerk is the most important person in the courtroom, next to the Judge
- 4. Be on time, be prepared, be on your toes

### Dealing with other counsel

- Keep in mind this is only one client, but your colleague for the rest of your career
- o Be ready to reach agreements that assist both counsel and clients
- o Be willing to concede easy issues, and litigate the tough ones
- o Put it in writing

### Family Law Bar

- o Join the OCBA & the Family Law Section
- o Mentor up
- o Guard your conduct- your reputation is made early and lost easily

### **Conclusion**

- o Learn FAMILY LAW before you practice it!
  - o If you do not know, get help or refer case
- Come to LJC/CJC and watch FAMILY LAW proceedings
- o Get a mentor
- o CLE, CLE, CLE and get certified

# BRIDGING THE GAP

# EMPLOYMENT/ LABOR LAW

### Orange County Bar Association – Bridging the Gap Employment/Labor Law

### I. <u>Introduction</u>

A. Who are we? / What do we do?

### II. Labor Law v. Employment Law

- A. Labor Law
  - 1. Unions
  - 2. National Labor Relations Act (before the NLRB)
  - 3. Unfair Labor Practices (ULPs)
  - 4. Not very common in California

### **B.** Employment Law

- 1. Discrimination (statutory and common law)
  - Race, gender, disability, etc.
- 2. Wrongful termination (common law, based on statute)
- 3. Harassment (statutory)
  - Race, gender, disability, etc.
- 4. Retaliation (statutory, generally, but not just DFEH)
- 5. Labor Code (wage & hour, other statutory violations, individual claims and class actions)
- 6. Trade Secret/Unfair Competition/Covenants Not to Compete
- 7. Workers' Compensation (L.C. 132a claims & serious and willful)
- 8. Intentional tort claims (assault, battery, false imprisonment, intentional infliction of emotional distress, fraud, fraudulent inducement)
- 9. Work place violence (restraining orders)
- 10. Workplace/third-party privacy
- 11. Drug testing / workplace searches
- 12. Advising employers what to do
- 13. Sex harassment training (50+ EEs, Cal. Gov't Code § 12950.1)
- 14. Employee handbooks and policy and procedure manuals and arbitration agreements.
- 15. Employment and Severance agreements

### III. <u>Practice Locations</u>

- A. Courts (state and federal)
- B. Arbitration / Mediation

### C. Administrative

- 1. Division of Labor Standards Enforcement (DLSE)
- 2. Equal Employment Opportunity Commission (EEOC)
- 3. Department of Fair Employment and Housing (DFEH)
- 4. Workers Compensation Appeals Board (WCAB)
- 5. Division of Occupational Safety and Health (Cal/OSHA)
- 6. California Unemployment Insurance Appeals Board Employment Development

Department (EDD)

### IV. <u>Practical Advice for Employment Litigation</u>

SUBJE0.CT	Plaintiff's Perspective	Defendant's Perspective
Intake		
	Know your client	Know plaintiff
	<ul> <li>Background checks - authorizations</li> <li>Google, etc.</li> <li>Form Interrogatories</li> </ul>	<ul><li>Background checks - authorizations</li><li>Google, etc.</li></ul>
		Check for arbitration agreements if litigate, could waive right to enforce
		Collective bargaining agreements affects primarily contract claims
Exhaustion of		

Administrative Remedies

Administrative Charge filing deadlines

- **EEOC** 180 days after occurrence of alleged act occurred, or 300 days if charge is also covered by state or local anti-discrimination law/civil action must be filed within 90 days after agency dismissal or issuance of right-to-sue notice
- **DFEH** 1 year after the last alleged wrongful action/civil action must be filed within one year of issuance of right to sue letter

Other administrative remedies --

Continuing violation

Wrongful termination and other tort claims; implied contract claims – 2 year statute of limitations

### Pleadings

Complaint	Answer
Specificity v. Notice	
Fewer COA than more? (Demurrer)	Fewer affirmative defenses rather than more? (Demurrer to Answer)
Don't plead so as to allow removal to federal court	Importance of administrative charge
Use the jury instructions (CACIs in OC)	Demurrers
Resisting Arbitration <i>Metters v.</i> <i>Ralphs Grocery</i> (2008) 161 Cal.App.4th 696	Viability of contractual arbitration

### Discovery

	Interrogatories – form or special?	Ask them before they ask you! – Interrogatories, Request for Production, Deposition Notice
	Use the jury instructions	
Summary Judgment		
CCP §437c		
	Expect one	Understand the elements of the COAS
	Understand the burdens of proof necessity for evidence beyond establishment of the <i>prima facie</i> case	Understand the burdens of proof plaintiff's claim versus affirmative defenses

### VI. <u>Resources</u>

A. Orange County Bar Association Labor & Employment Section

California State Bar Labor & Employment Section

### B. Books

- 1. Richard Simmons, *Wage and Hour Manual for California Employers* (14th Ed., 2010), Castle Publications www.castlepublications.com
- 2. Richard Simmons, *Employment Discrimination and EEO Practice* Manual for California Employers (9th Ed.), Castle Publications
- 3. The Rutter Group, California Practice Guide, Employment Litigation (pink books)
- 4. California Chamber of Commerce Labor Law Digest (2010 Ed.)

### C. Websites

- Orange County Superior Court http://www.occourts.org
- Los Angeles Superior Court http://www.lasuperiorcourt.org
- Central District Court http://www.cacd.uscourts.gov
- Department of Fair Employment & Housing (DFEH) http://www.dfeh.ca.gov
- Workers' Compensation Appeals Board (WCAB) http://www.dir.ca.gov/WCAB
- Division of Labor Standards Enforcement (DLSE) http://www.dir.ca.gov/dlse
  - Opinion Letters
     http://www.dir.ca.gov/dlse/DLSE\_OpinionLetters.htm
  - Wage Orders http://www.dir.ca.gov/Iwc/WageOrderIndustries.htm
- California Unemployment Insurance Appeals Board http://www.cuiab.ca.gov
- California Dept of Occupational Safety and Health http://www.dir.ca.gov/dosh
- State Bar of California (attorney search) <u>http://members.calbar.ca.gov</u>

o Labor & Employment Law Section (under Attorney Resources/Sections/Labor and Employment Law Section

- California Employment Lawyers Assoc. (plaintiffs only) http://www.celaweb.org
- Equal Employment Opportunity Commission (federal) http://www.eeoc.gov

- Department of Labor (federal) <u>http://www.dol.gov</u>
- ADA homepage (federal) http://www.ada.gov

### VII. <u>Questions</u>

### **Orange County Bar Association Bridging the Gap**

### **Employment Law Hypotheticals**

### No. 1

Paul, an experienced floral designer, lived in Arizona. Due to divorce, his young son lived in Orange County, CA. Unfortunately, Paul had been laid off from his last job. He spent his days trolling job boards. Eventually, he located what he believe to be the ideal job for him -- a job with a small floral manufacturer in OC. He applied. Through a series of emails, the employer, Donna, expressed interest, but also the reservation that he was too expensive. He indicated he wanted to work, and that part of the reason he was willing to take less salary that he was probably worth was because he wanted to get to OC because of his son. Discussions about the terms and conditions of employment occurred through email, including about the availability of relocation assistance. There was no discussion about whether or not Paul would be an at-will employee, although Paul expressed his desire to remain with the company for the long-term.

Paul relocated to OC. On his first day of employment he was given a packet of employment documents, which he signed. One of these was an at-will agreement. He started to work. Seven days after he began, he expressed some concern about a request for him to travel to Hong Kong for business. Eleven days after he began, he found it necessary to bring his son to work with him after hours to complete a project. Twelve days after he began, he was fired.

What claims did he assert and was the employer's motion for summary judgment/adjudication successful?

### No. 2

Pete lived in Northern CA, as a successful sales representative. He worked with a struggling client closely-held company in OC. The company recruited him to assist with product placement. He relocated to OC. He worked for three months, at which time the entire board of directors was replaced, principal investors were installed as the new board, and Pete was fired. He did not receive his last paycheck or commissions he was owed. Company said Pete was never an employee, but an independent contractor. No written agreement evidencing his status exist.

After Pete was fired, Company sued him and other former employees for misappropriation of trade secrets and embezzlement. In a public filing on the Pink Sheets, this litigation was reported and the allegations were stated in detail, including identifying which defendants committed which acts.

Pete wants to file a Cross-Complaint. What claims can he assert?

# BRIDGING THE GAP

# IMMIGRATION LAW

# AN OVERVIEW OF U.S. IMMIGRATION LAW

# Introduction

- U.S. Immigration Laws
- Government Agencies Involved
- Definitions and Myth Busters
- Immigrant and Nonimmigrant Visas
- Family-Based Immigration
- Employment-Based Immigration
- Asylum
- VAWA, U and T Visas
- Diversity Visas
- Naturalization
- Removal and Deportation issues
- Litigation

# Where do U.S. immigration laws come from?

- Constitution
- Bills
- Ratification by Congress and the President
- Federal Register Notice
- Regulations
- Agency Policy Memos

# Which government agencies are involved?

- Department of Homeland Security (DHS)
- U.S. Citizenship & Immigration Service (USCIS)
- U.S. Customs and Border Protection (CBP)
- U.S. Immigration and Customs Enforcement (ICE)
- Department of Labor (DOL)
- U.S. Department of State (DOS)

# A Few Definitions and Mythbusters

- Alien
- Citizen
- Immigrant ("green card")
- Visa
- Employment Authorization
- Undocumented Alien
- Myths about immigration in the United States

# Immigrant vs. Non-immigrant Visas

- An Immigrant Visa (also known as a "green card" or lawful permanent residence) allows a person to
  reside and work in the U.S. <u>permanently</u>. Permanent residents may not vote in U.S. elections. This is a
  right reserved for U.S. citizens.
- A Non-immigrant Visa allows a person to enter the U.S. <u>temporarily</u> for a specific purpose, e.g., business, investment, attend school, etc.
- There are different processes for obtaining immigrant and non-immigrant status, although the two may be pursued concurrently

# Permanent Residence in the United States)

- Family Based Immigration
- Employment Based Immigration
- Other (Asylum, VAWA, T visa, U visa, Diversity Lottery)

# Family Based Immigration

- U.S. Citizens (over the age of 21) can sponsor/petition for:
  - Spouse
  - Unmarried or Married Sons and Daughters
  - Parents
  - Siblings

*Immediate relatives* of U.S. citizens—that is, spouses, unmarried minor children and parents are admitted as their applications are processed.

- A Legal Permanent Resident can only petition for:
  - Spouse
  - Unmarried children

# Employment Based Immigration

- Multinational Managers and Executives
- Outstanding Professors or Researchers
- Extraordinary Ability
- Advanced degree professionals or exceptional ability (Labor Certification vs. National Interest)
- Skilled workers or Professionals must demonstrate:
  - Minimum 2 years of experience
  - Insufficient number of qualified US workers to perform job
  - Must pay prevailing wage
- Workers with less than 2 years of experience (10,000 visas annually; 150,000 waiting)
- Investment of \$1 million or \$500,000 in high unemployment/impoverished area
- Most employment based petitions require sponsorship and full cooperation from employer

# Visa Bulletin and Priority Dates

- State Department releases Visa Bulletin monthly (generally the 15<sup>th</sup> of the previous month)
- Priority Dates determine when an individual with a pending employment petition or family petition can apply for Legal Permanent Residency
- Understanding Preference Categories and Waiting Times

# Asylum

- Applicants must have been persecuted or have a reasonable fear of being persecuted based on:
  - Race
  - Religion
  - Nationality
  - Membership in a Social Group
  - Political Opinion
- Must apply within the first year of arriving to the U.S.

# VAWA

- Who Qualifies: Abused spouse of USC or LPR, Non-abused spouse of USC or LPR whose child has been abused by the USC or LPR spouse, even if child not related to abuser; Abused child of USC or LPR; Abused "intended spouses" of USCs & LRRs; Abused and non-abused children of the self-petitioner
- Requires:
  - Marriage or "intended marriage" relationship to abuser, and
  - Abusive spouse is USC or LPR, and
  - Marriage entered into in good faith, and
  - Battery or extreme cruelty by USC or LPR spouse during marriage, and
  - Good moral character and
  - Past or present residence with USC/LPR spouse, and

Either current residence in U.S. or, if living outside U.S., abusive spouse is employee of USG or member of USAF OR some abuse occurred in U.S..

• Benefits Include:

Self-petitioner need not rely on USC or LPR abuser to file petition.

- Deferred action status
- Employment authorization
- Public benefits

If approved, self-petitioner and children apply for permanent residence.

# U Visa

The "U-Visa" or "U nonimmigrant status" is a temporary permission to be in the U.S. for certain noncitizen crime victims who have suffered substantial mental or physical abuse as a result of the crime. U visas were created by the Victims of Trafficking and Violence Protection Act of 2000 to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other criminal activity of which aliens are victims, while offering protection to victims of such offenses.

• s/he suffered substantial physical or mental abuse as the result of having been the victim of one of the following or similar crimes (INA 101(a)(15)(U)(iii)):

Rape	Abduction	Domestic Violence		
Incest	Blackmail	False Imprisonment		
Torture	Trafficking	Being Held Hostage		
Murder	Manslaughter	Involuntary Servitude		
Perjury	Slave Trade	Obstruction of Justice		
Peonage	Sexual Assault	Abusive Sexual Contact		
Extortion	Felonious Assault	Female Genital Mutilation		
Kidnapping	Witness Tampering	Unlawful Criminal Restraint		
Prostitution	Sexual Exploitation			

- S/he has information concerning the criminal activity (INA 101(a)(15)(U)(i)(II));
- S/he has been, is being, or is likely to be helpful to a local, state or federal law enforcement official investigating or prosecuting the crime (INA 101(a)(15)(U)(i)(II));
- The crime (local, state or federal) violated the laws of the United States or occurred in the United States (INA 101(a)(15)(U)(i)(II))

# <u>T Visa</u>

- Person was brought to the U.S. involuntarily or through deception for the purposes of involuntary servitude or prostitution
- Physically present in the U.S., American Samoa, North Mariana Islands due to trafficking
- Under 15 years of age <u>or</u> has complied with any federal law enforcement agency reasonable request for assistance in the investigation or prosecution of acts of trafficking.
- Would suffer extreme hardship involving unusual and sever harm if removed and
- Has not engaged in trafficking
- U.S. Attorney's Office
- Bureau of Immigration & Customs Enforcement
  - Santa Ana Office: (714) 972-4100
  - Assist with T-visas and work authorizations
  - Access to relevant databases and records
  - Interpreter resources
- Federal Bureau of Investigation
  - Santa Ana Office: (714) 542-8825
  - Substantial investigative resources, overseas investigative contacts, interpreter resources, etc.

# Diversity Lottery

- 50,000 immigrant visas available each year.
- Individuals from countries with low immigration rates to the U.S.
- "Winners" gain opportunity to obtain legal permanent residency
- Spouses and children under 21 are included
- Generally individuals from Canada, China (except Hong-Kong, Macau, or Taiwan), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, England and its territories, and Vietnam are not eligible.

# Issues Affecting Green Card Processing

- Quota backlogs
- Maintaining lawful status while pursuing green card -
- Changes in procedures/laws
- Delays caused by backlogs at the agencies
- 245(i)
- Illegal Re-e ntry
- 3/10 year bars

Criminal Convictions

# Who Can Become a Naturalized Citizen?

Lawful Permanent Residents are eligible to apply for U.S. citizenship through a process called **naturalization**. To qualify for naturalization, applicants generally must:

- reside in the U.S. for five years (three if they are married to a US. citizen)
- have not committed any serious crimes
- show that they have paid their taxes and are of "good moral character," and
- demonstrate a knowledge of U.S. history and government
- as well as an ability to understand, speak, and write ordinary English (exception if LPR for 20 yrs. +>50 years old <u>or</u> LPR for 15 yrs +>55.

Who Can Be Removed (Deported) from the U.S.?

- Individuals present in the U.S. without permission (visa, residency, etc.)
- Individuals who are not U.S. Citizens and have been convicted of certain crimes
- Individuals who have overstayed their non-immigrant visas
- Individuals who have been denied permanent residency or extension of their non-immigrant visa

# Removal Process

- Apprehend and/or served Notice to Appear
- Notice to Appear is the charging document which contains factual allegations and the charges of removability
- Given opportunity (often coerced) to sign for Voluntary Departure or have case heard before an immigration judge
- Those detained main be eligible for bond (min. \$1,500)
- Applications for relief may be submitted to the Department of Justice Executive Office for Immigration Review (aka Immigration Court)

# Litigation

- Exhaustion of Administrative Remedies
- Jurisdictional Considerations
- Petition for Writ of Habeas Corpus
- Petition for Writ of Mandamus
- Petition for Review of Denial of Naturalization
- Petition for Review of Denial of Asylum
- Worksite Enforcement Issues



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American Immigration Lawyers Association

http://www.aila.org

http://www.ailf.org

American Immigration Law Foundation

Immigration Law Weekly

Department of Homeland Security US Citizenship and Immigration Services Customs and Border Patrol Immigration & Customs Enforcement http://.ilw.com

http://dhs.gov http://uscis.gov http://www.cbp.gov http://bice.immigration.gov

Department of Laborhttp://dol.govEmployment & Training Admin.http://www.doleta.govLabor Condition Applicationhttp://www.lca.doleta.govOccupational Outlook Handbookhttp://www.bls.gov/oco/OES Wage Surveyhttp://www.flcdatacenter.comPERMhttp://workforcesecurity.doleta.gov/foreign/perm.aspDictionary of Occupational Titleshttp://www.oalj.dol.gov/libdot.htm

Department of State Visa Bulletin Embassies of the USA Worldwide

http://www.state.gov http://travel.state.gov/visa/frvi\_bulletin.html http://travel.state.gov/travel/tips/embassies

Department of Justice EOIR Home Page EOIR Virtual Law Library

<u>http://www.usdoj.gov</u> <u>http://www.usdoj.gov/eoir</u> <u>http://www.usdoj.gov/eoir/vll/libindex.html</u>

Federal Register http://www.usdoj.gov/eoir/vll/fedreg/recreginternet.htm Immigration & Nationality Act http://uscis.gov/graphics/lawsregs/INA.htm 8 CFR - Regulations http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200308 20 CFR - Regulations http://www.access.gpo.gov/cgi-bin/cfrassemble.cgi?title=200320 BIA & Attorney General Opinions http://www.usdoj.gov/eoir/vll/intdec/lib\_indecitnet.html Foreign Affairs Manual http://foia.state.gov/regs/search.asp

Glossary of Terms <u>http://travel.state.gov/visa/frvi/glossary/glossary\_1363.html</u> 1913 E. 17<sup>th</sup> Street, Suite 204 • Santa Ana, CA • 92705 PHONE (714) 494-4545 • Fax (714) 876-0400 • <u>WWW.USIMMLawgroup.com</u>

# **OFFICE OF BUSINESS LIAISON**

### U.S. DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 1	EBISS: (800) 357-2099
	NCSC: (800) 357-5283
Nonimmigrant Classification	TDD: (800) 767-1833
<b>Employment Eligibility and Reference Guide</b>	Fax: (202) 272-1865
	Order Forms: (800) 870-3676
March 16, 2005	Website: www.uscis.gov

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

# Work Authorization Relating to Nonimmigrant Classification

### **Employment Eligibility Terms**

- Eligible for Employment Authorization Document (EAD) incident to status Employment of the alien is authorized without restriction as to location or type of employment as a condition of the alien's specific immigration status. The alien must submit Form I-765<sup>1</sup> to the USCIS to obtain an EAD (Form I-688B or I-766) evidencing employment authorization.
- Employer Specific

The alien may only be employed by the specific employer and subject to the restrictions indicated as a condition of his or her admission or immigration status by the USCIS. The alien is not issued a separate EAD by the USCIS.

### • Must apply for employment authorization

Alien must submit Form I-765 to the USCIS for adjudication. If approved, the USCIS will issue an EAD valid for a specific period.

• Not eligible for employment by a United States employer.

CLASS <sup>2</sup>	CLASSIFICATION DESCRIPTION	EMPLOYMENT ELIGIBILITY	
A-1	Ambassador, public minister, career,	Employer-specific; Certain dependents from countries	
	diplomatic or consular officer, and	with special bilateral agreements <sup>3</sup> are eligible for EAD	
	immediate family.	incident to status; other dependents must apply for	
		employment authorization.	
A-2	Other foreign government official or	Employer-specific; Certain dependents from countries	
	employee and immediate family.	with special bilateral agreements are eligible for EAD	
		incident to status; other dependents must apply for	
		employment authorization.	
A-3	Personal employee of A-1, A-2, and	Employer-specific; Dependents are not eligible for	
	immediate family.	employment.	
B-1	Temporary Visitor for Business	Not eligible for employment, except servants of holders	
	of B, E, F, H, I, J, L, NAFTA visas		
	residing in a foreign country and		
		airlines not eligible for E-1 status. Such servants must	
		apply for employment authorization.	
B-2	Temporary Visitor for Pleasure	Not eligible for employment	

<sup>&</sup>lt;sup>1</sup> Form I-765 is available at <<u>http://www.immigration.gov/graphics/formsfee/forms/I-765.htm</u>> (last revised June 12, 2003).

<sup>&</sup>lt;sup>2</sup> This bulletin only covers non-immigrant classes A through V. Other categories of aliens eligible for employment authorization (*e.g.* legal permanent residents, aliens granted withholding of removal, temporary protected status, asylees/refugees, and certain aliens with pending petitions) are included in Bulletin 108, "Employment Authorization of Aliens."

<sup>&</sup>lt;sup>3</sup> See U.S. Dept. of State, Office of Protocol, *Release: Foreign Consular Offices in the United States*, available at <<u>http://www.state.gov/s/cpr/rls/fco/c5698.htm</u>> (last revised September 21, 2001).

C-1	Alien in transit directly through U.S.	Not eligible for employment	
C-2	Alien in transit to United Nations	Employer-specific	
	Headquarters.		
C-3	Foreign government official, immediate family, or personal employee in transit.	Employer-specific	
C-4	Transit without visa (see also TWOV)	Not eligible for employment	
D-1	Crewmember	Employer-specific	
D-2	Crewmember departing by means other than arriving vessel.	Employer-specific	
E-1	Treaty Trader and employees, spouse, and children.	Employer-specific; Spouses in same classification are eligible for EAD incident to status; children are not eligible for employment, except unmarried dependent children of E-1 employees of the Coordination Counci for North American Affairs who may apply for employment authorization.	
E-2	Treaty Investor and employees, spouse, and children.	Employer-specific; Spouses in same classification are eligible for EAD incident to status; children are not eligible for employment.	
F-1	Academic Student (except Border Commuters from Canada or Mexico, see below)	Eligible for on campus employment and curricular practical training incident to status (no separate EAD necessary). Must apply for employment authorization for optional practical training or to work off-campus.	
F-1/F-3	Border Commuter Academic Students from Canada and Mexico	Must apply for employment authorization for curricular practical training or post-completion optional practical training.	
F-2	Spouse or child of F-1	Not eligible for employment.	
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.	
G-2	Other representative of recognized foreign member government to international organization, and immediate family.	Employer-specific; Dependents are not eligible for employment.	
G-3	Representative of non-recognized or non- member government to international organization, and immediate family.	Employer-specific; Certain dependents from countries with special bilateral agreements must apply for employment authorization.	
G-4	International organization officer or employee, and immediate family.	Employer-specific; Dependents must apply for employment authorization.	
G-5	Attendant, servant, or personal employee of G-1, G-2, G-3, G-4, and immediate family.	Employer-specific; Dependents are not eligible for employment.	
H-1b	Alien in Specialty Occupation (profession)	Employer-specific	
H-1c	Registered Nurse serving in underserved area	Employer-specific	
H-2a	Temporary worker performing <u>Agricultural</u> <u>Services</u> unavailable in the United States (Petition filed on or after 06/01/87).	Employer-specific	
H-2b	Temporary worker performing other services unavailable in the United States (petition filed on or after 06/01/87).	Employer-specific	
H-3	Trainee	Employer-specific	
H-4	Spouse or child of H-1, H-2, or H-3	Not eligible for employment	
Ι	Information Media Representatives and immediate family.	Employer-specific; dependents are not eligible for employment.	
J-1	Exchange Visitor	Employer-specific	
J-2	Spouse or child of J-1	Must apply for employment authorization.	
K-1	Fiancé (e)	Eligible for EAD incident to status	
K-2	Minor child of K-1	Eligible for EAD incident to status	
K-3	Spouse of US citizen	Eligible for EAD incident to status	
K-4	Child of K-3	Eligible for EAD incident to status	
L-1A	Intracompany Transferee (manager or executive)	Employer-specific	
L-1B	Intracompany Transferee (specialized knowledge alien)	Employer-specific	
L-2	Spouse or child of L-1	Spouses of L-1s are eligible for EAD incident to status;	

		children are not eligible for employment.	
M-1	Non-academic student (except Border	Must apply for employment authorization for post-	
	Commuters from Canada or Mexico, see below)	completion optional practical training.	
M-1/M-3	Border Commuter Non-Academic Students	Must apply for employment authorization for post-	
	from Canada and Mexico	completion optional practical training.	
M-2	Spouse or child of M-1 Parent of an SK-3 Special Immigrant	Not eligible for employment.	
N-8 N-9	Child of N-8, SK-1, SK-2 or SK-4 Special	Eligible for EAD incident to status	
IN-9	Immigrant	Eligible for EAD incident to status	
NATO-1	Principal Permanent Representative of Member	Employer-specific; Certain dependents from countries	
	State to NATO, official staff, and immediate	with special bilateral agreements must apply for	
	family.	employment authorization.	
NATO-2	Other Representative of Member State to NATO and immediate family; Dependents of Member	Employer-specific; Certain dependents from countries	
	of a Force Entering in Accordance with the	with special bilateral agreements must apply for	
	Provisions of the NATO Status-of-Forces	employment authorization.	
	Agreement or in Accordance with the provisions		
	of the Protocol on the Status of International		
	Military Headquarters; Members of such a Force if issued visas and immediate family.		
NATO-3	Official clerical staff accompanying	Employer-specific; Certain dependents from countries	
	representative of member state to NATO and	with special bilateral agreements must apply for	
	immediate family.	employment authorization.	
NATO-4	NATO official other than those qualified as	Employer-specific; Certain dependents from countries	
	NATO-1 and immediate family.	with special bilateral agreements must apply for	
		employment authorization.	
NATO-5	NATO expert other than those qualified as	Employer-specific; Certain dependents from countries	
	NATO-4 employed in NATO missions and	with special bilateral agreements must apply for	
	immediate family.	employment authorization.	
NATO-6	Member of civilian component accompanying a force entering in accordance with NATO Status-	Employer-specific; Certain dependents from countries	
	of-Forces Agreement or attached to Allied	with special bilateral agreements must apply for	
	Headquarters under "Protocol on the Status of	employment authorization.	
	International Military Headquarters" set up		
	pursuant to the North Atlantic Treaty and		
NATO-7	immediate family. Personal employee of NATO-1, NATO-2,	Employer-specific; Certain dependents from countries	
10110 /	NATO-3, NATO-4, NATO-5, and NATO-6, and	with special bilateral agreements must apply for	
	immediate family.	employment authorization.	
	•		
O-1	Alien with Extraordinary Ability in	Employer-specific	
	sciences, arts, education, business, or		
0.0	athletics		
O-2	Aliens accompanying/assisting O-1 performers or athletes.	Employer-specific	
0-3	Spouse or child of O-1 or O-2	Not eligible for employment under this category	
P-1	Individual or Team Athletes, and Group	Employer-specific	
	Entertainers.		
P-2	Individual/Group Artist/ Entertainer under	Employer-specific	
D 2	Reciprocal Exchange Program.		
P-3	Artist or Entertainer in Culturally Unique Program.	Employer-specific	
P-4	Spouse or child of P-1, P-2, or P-3	Not eligible for employment under this category	
Q-1	International Cultural Exchange Visitor	Employer-specific	
Q-2	Irish Peace Process Cultural and Training	Employer-specific	
0.2	Program (Walsh visas)	Not clicible for ometa-ment	
Q-3	Spouse or child of Q-2	Not eligible for employment	
R-1	Religious Worker	Employer-specific	
<u>R-2</u> S-5	Spouse or child of R-1 Witness or informant regarding criminal	Not eligible for employmentMust apply for employment authorization.	
5-5	organization.	אינטא מאריז אינטא אינעא	
S-6	Witness or informant regarding terrorism	Must apply for employment authorization.	
S-7	Spouse, children, or parent of S-5 or S-6	Must apply for employment authorization.	

T-1	Victim of a severe form of trafficking in persons.	Eligible for EAD incident to status
T-2	Spouse of trafficking victim	Must apply for employment authorization.
T-3	Child of trafficking victim	Must apply for employment authorization.
T-4	Parent of trafficking victim under 21	Must apply for employment authorization.
TN-1	Canadian NAFTA Professional	Employer-specific
TN-2	Mexican NAFTA Professional	Employer-specific
TD	Spouse or child of TN-1 or TN-2	Not eligible for employment
TWOV	Transit without a visa (Passenger or crew admitted temporarily) (see also C-4)	Not eligible for employment
U-1	Victim of certain criminal activity	Eligible for EAD incident to status
U-2	Spouse of U-1 victim	Must apply for employment authorization.
U-3	Child of U-1 victim	Must apply for employment authorization.
U-4	Parent of U-1 victim under 21	Must apply for employment authorization.
V-1	Spouse of Lawful Permanent Resident who is the principal beneficiary of a family-based petition.	Eligible for EAD incident to status
V-2	Child of Lawful Permanent Resident who is the principal beneficiary of a family-based petition.	Eligible for EAD incident to status
V-3	Derivative child of a V-1 or V-2	Eligible for EAD incident to status

# Nonimmigrant Classification Reference Guide

### How to use this Information Sheet:

The letters symbolizing nonimmigrant classification, which match the symbols for status granted by **the Department of Homeland Security, U.S. Citizenship and Immigration Services** and visas issued by the State Department (at U.S. Consulates abroad), are followed by brief descriptions of categories. Cites listed under the heading "Law" refers to corresponding provisions of the Immigration and Nationality Act (INA). In addition to the statutory cites listed, INA sections 212 (inadmissibility), 214 (admission of nonimmigrants), 237 (General classes of deportable aliens), 245 (adjustment of status), and 248 (change/extension of nonimmigrant status) govern other general issues relevant to nonimmigrants. Applicable provisions from the <u>Code of Federal Regulations</u> (C.F.R.) can be found in two places. Provisions that relate uniquely to given status categories are found under the <u>"Regulation"</u> heading next to the corresponding status symbols, descriptions, and provisions of law. General regulatory provisions governing non-immigrants, relating to such matters as requirements for admission to and employment in the U.S., change or adjustment of status, and issuance of visas from U.S. Consulates, which apply to more than one or all nonimmigrant categories, appear at the end of this information bulletin. Cites specifically related to employment authorization are in bold. (For information on Hiring Temporary Employees from Outside the United States, request Employer Information Bulletin 2.)

VISA STATUS	CLASSIFICATION DESCRIPTION	LAW INA SECTIONS	<b>REGULATION</b>
	Equip (Commune Officials (Commune))		9 C E P + 5 211 + 1(-)
А	Foreign Government Officials (General)	101(a)(15)(A)	8 C.F.R. § 211.1(c)
		263	8 C.F.R. § 214.2(a)
			8 C.F.R. § 215.7
			8 C.F.R. § 223.2(c)(3)
			8 C.F.R. § 274a.12(b)(1-2)
			8 C.F.R. § 274a.12(c)(1)
			22 C.F.R. § 41.2124
			22 C.F.R. § 41.2627
			22 C.F.R. § 41.102(b)(3)
			22 C.F.R. § 46.7
A-1	Ambassador, public minister, career, diplomatic	101(a)(15)(A)(i)	8 C.F.R. § 274a.12(b)(1)
	or consular officer, and immediate family		8 C.F.R. § 274a.12(c)(1)
A-2	Other foreign government official or employee	101(a)(15)(A)(ii)	
	and immediate family		
A-3	Personal employee of A-1 or A-2, and immediate	101(a)(15)(A)(iii)	8 C.F.R. § 274a.12(b)(2)
	family		8 C.F.R. § 214.2(a)(9)

В	Temporary visitor for Business or Pleasure (General)	101(a)(15)(B) 217	8 C.F.R. § 214.2(b) 8 C.F.R. § 221.1
			22 C.F.R. § 41.2 22 C.F.R. § 41.31-33
B-1	Temporary visitor for business		8 C.F.R. § 274a.12(c)(17)
B-2	Temporary visitor for pleasure		0  C.P.R.  g 2/4a.12(0)(17)
D-2	Temporary visitor for preasure		
С	Alien in Transit (General)	101(a)(15)(C)	8 C.F.R. § 214.2(c)
		248(1)	8 C.F.R. § 248.2(b) 8 C.F.R. § 274a.12(b)(3)
			22 C.F.R. § 41.23 22 C.F.R. § 41.71
C-1	Alien in Transit directly through U.S.		8 C.F.R. § 214.2(c)(1)
C-2	Alien in transit to United Nations Headquarters		8 C.F.R. § 274a.12(b)(3)
C-3	Foreign government official, immediate family, or	212(d)(8)	8 C.F.R. § 274a.12(b)(3)
	personal employee, in transit		22 C.F.R. § 41.21
			22 C.F.R. § 41.23
			22 C.F.R. § 41.2627
D			
D	Crewmember	101(a)(15)(D)	8 C.F.R. § 214.2(d)
D-1	Crewmember (Sea or Air)	214(f) 248(1)	8 C.F.R. § 248.2(b)
D.A	· · · · · ·	248(1)	8 C.F.R. § 252
D-2	Crewmember departing by means other than	252 258	22 C.F.R. § 41.4142
	arriving vessel	250	
Е	Treaty Traders/Treaty Investors (General)	101(a)(15)(E)	8 C.F.R. § 211.1(c)
E-1	Treaty trader, and employees, spouse, and	101(a)(15)(E)(i)	8 C.F.R. § 214.2(e)
L-1	children	214(e)(6)	8 C.F.R. § 223.2(c)(3)
E-2	Treaty investor, and employees, spouse, and	101(a)(15)(E)(ii)	C.F.R. § 274a.12(b)(5)
	children	214(e)(6)	22 C.F.R. § 41.51
			· · · · ·
F	Academic Students (General)	101(a)(15)(F)	8 C.F.R. § 214.1(b)
		214(m)	8 C.F.R. § 214.2(f)
			8 C.F.R. § 274a.12(b)(6)
			8 C.F.R. § 274a.12(c)(3)
<b>F</b> 1			22 C.F.R. § 41.61
F-1	Academic student (except Border Commuters	101(a)(15)(F)(i)	8 C.F.R. § 274a.12(b)(6)
F-1/F-3	from Canada or Mexico, see below) Border Commuter Academic Student from	214(m)	8 C.F.R. § 274a.12(c)(3)
Γ-1/Γ-3	Canada and Mexico	101(a)(15)(F)(iii)	8 C.F.R. § 214.2(f)(18)
F-2	Spouse or child of F-1	101(a)(15)(F)(ii)	8 C.F.R. § 214.2(f)(15)
12	Spouse of enne of f f		0 0.1.10. § 21 1.2(1)(15)
G	Foreign Government Officials to International	101(a)(15)(G)	8 C.F.R. § 211.1(c)
-	Organizations	263	8 C.F.R. § 214.2(g)
	č		8 C.F.R. § 215.7
			8 C.F.R. § 223.2(c)(3)
			8 C.F.R. § 274a.12(b)(7)
			8 C.F.R. § 274a.12(b)(8)
			8 C.F.R. § 274a.12(c)(4)
			22 C.F.R. § 41.21
			22 C.F.R. § 41.24
			22 C.F.R. § 41.2627
			22 C.F.R. § 41.102(b)(3) 22 C.F.R. § 46.7
G-1	Principal resident representative of recognized	101(a)(15)(G)(i)	8 C.F.R. § 214.2(g)(5)
0-1	foreign member government to international	101(a)(13)(0)(1)	8 C.F.R. § 274a.12(b)(7)
	organization, staff, and immediate family.		8 C.F.R. § 274a.12(b)(7) 8 C.F.R. § 274a.12(c)(4)
G-2	Other representative of recognized foreign	101(a)(15)(G)(ii)	8 C.F.R. § 214.2(g)(9)
	member government to international organization, and immediate family.		8 C.F.R. § 274a.12(b)(7)
G-3	Representative of non-recognized or nonmember	101(a)(15)(G)(iii)	8 C.F.R. § 214.2(g)(5)
	foreign government to international organization,		8 C.F.R. § 274a.12(b)(7)
1			
	and immediate family.		8 C.F.R. § 274a.12(c)(4)

G-4	International organization officer or employee,	101(a)(15)(G)(iv)	
G-5	and immediate family.Personal employee of G-1, G-2, G-3, G-4, and	101(a)(15)(G)(v)	8 C.F.R. § 214.2(g)(9)
	immediate family.		8 C.F.R. § 274a.12(b)(8)
Н	Temporary Workers (General)	101(a)(15)(H) 212(m), (n) 214(c), (g), (h), (i), (m)	8 C.F.R. § 214.2(h) 8 C.F.R. § 274a.12(b)(9)
H-1B	Alien in Specialty Occupation (profession)	218 101(a)(15)(H)(i)(b) 212(n) 214(c)(5)(A) 214(c)(9)	22 C.F.R. § 41.53 8 C.F.R. § 214.2(h)(4) 8 C.F.R. § 274a.12(b)(9)
H-1C	Registered Nurse Serving in underserved area	214(g), (h), (i), (m) 101(a)(15)(H)(i)(c) 212(m) 214(l)	8 C.F.R. § 214.2(h)(3) 8 C.F.R. § 274a.12(b)(9)
H-2A	Services         unavailable in the United States (Petition filed on or after 06/01/87).	214(h) 101(a)(15)(H)(ii)(a) 214(c)(1) 218	8 C.F.R. § 214.2(h)(5) 8 C.F.R. § 274a.12(b)(9)
H-2B	Temporary worker performing other services unavailable in the United States (petition filed on or after 06/01/87).	101(a)(15)(H)(ii)(b) 214(c)(5)(A) 214(g)	8 C.F.R. § 214.2(h)(6) 8 C.F.R. § 274a.12(b)(9)
Н-3	Trainee	101(a)(15)(H)(iii)	8 C.F.R. § 214.2(h)(7) 8 C.F.R. § 274a.12(b)(9)
H-4	Spouse or child of H-1, H-2, or H-3	101(a)(15)(H)	8 C.F.R. § 214.2(h)(9)(iv)
Ι	Information Media Representatives n, spouse, and children.	101(a)(15)(I)	8 C.F.R. § 214.2(i) 8 C.F.R. § 274a.12(b)(10)
			22 C.F.R. § 41.51(e) 22 C.F.R. § 41.52
J	Exchange Visitors (General)	101(a)(15)(J) 212(e) 212(j) 214(l) 248(2-3)	8 C.F.R. § 214.1(b) 8 C.F.R. § 214.2(j) 8 C.F.R. § 274a.12(b)(11) 8 C.F.R. § 274a.12(c)(5) 22 C.F.R. § 41.53(f)
T 1		212()	22 C.F.R. § 41.54(g) 22 C.F.R. § 41.62-63 22 C.F.R. § 62
J-1	Exchange visitor	212(e) 214(l)	8 C.F.R. § 274a.12(b)(11)
J-2	Spouse or Child of J-1		8 C.F.R. § 274a.12(c)(5)
K	Fiancé (e) of a U.S. Citizen (General)	101(a)(15)(K) 214(d) 248(1)	8 C.F.R. § 212.2(c) 8 C.F.R. § 214.2(k) 8 C.F.R. § 248.2(b) 8 C.F.R. § 274a.12(a)(6) 8 C.F.R. § 274a.12(a)(9)
			22 C.F.R. § 41.81 22 C.F.R. § 41.108
K-1	Fiancé (e) of a U.S. Citizen	101(a)(15)(K)(i) 214(d)	8 C.F.R. § 274a.12(a)(6)
K-2	Minor child of K-1	101(a)(15)(K)(iii) 214(d)	
K-3	Spouse of a U.S. Citizen (LIFE Act)	101(a)(15)(K)(ii) 214(p)	8 C.F.R. § 274a.12(a)(9)
K-4	Child of K-3 (LIFE Act)	101(a)(15)(K)(iii) 214(p)	
L	Intracompany Transferees (General)	101(a)(15)(L) 214(c)(1) 214(c)(2)(E)	8 C.F.R. § 214.2(l) 8 C.F.R. § 274a.12(b)(12)
	Intracompany transferee (Executive, managerial)	214(h)	22 C.F.R. § 41.54 8 C.F.R. § 274a.12(b)(12)

L-1B	Intracompany transferee (specialized knowledge		8 C.F.R. § 274a.12(b)(12)
L-2	alien) Spouse or child of L-1	214(c)(2)(E)	8 C.F.R. § 214.2(l)(17)(v)
11		211(0)(2)(2)	0.0.1.10.3.21.1.2(1)(17)(7)
М	Non-academic Students	101(a)(15)(M)	8 C.F.R. § 214.2(m) 8 C.F.R. § 274a.12(c)(6)
			22 C.F.R. § 41.61
M-1	Vocational or other non-academic student (except Border Commuters from Canada or Mexico, see below)	101(a)(15)(M)(i)	8 C.F.R. § 214.2(m)(14) 8 C.F.R. § 274a.12(c)(6)
M-1/M-3	Border Commuter Vocational or Non-Academic Student from Canada and Mexico	101(a)(15)(M)(iii)	8 C.F.R. § 214.2(m)(14) 8 C.F.R. § 214.2(m)(19)
M-2	Spouse or child of M-1	101(a)(15)(M)(ii)	8 C.F.R. § 214.2(m)(17)
21			
Ν	Certain parents and children of Special Immigrants	101(a)(15)(N) 101(a)(27)(I) 101(a)(27)(L)	8 C.F.R. § 214.2(n) 8 C.F.R. § 274a.12(a)(7)
N-8	Parent of an SK-3 Special Immigrant	101(a)(15)(N)(i) 101(a)(27)(I)(i) 101(a)(27)(L)	
N-9	Child of N-8, SK-1, SK-2 or SK-4 Special Immigrant	101(a)(15)(N)(ii) 101(a)(27)(I)(ii)-(iv)	
NATO	NATO Representatives, Officials, and Employees	101(a)(15)(G)	8 C.F.R. § 214.2(s)
NATO	(General)	101(a)(13)(0) 101(a)(27)(L)	о С.г.к. <b>9</b> 214.2(8)
		Art. 1, 4 UST 1794	22 CFR § 41.25
		Art. 3, 4 UST 1796	8 C.F.R. § 274a.12(b)(17)
		Art. 3, 5 UST 877	8 C.F.R. § 274a.12(b)(18)
		Art. 12-21, 5 UST 1094-1100	8 C.F.R. § 274a.12(c)(7)
NATO-1	Principal Permanent Representative of Member State to NATO, (including any of its Subsidiary Bodies) Resident in the U.S. and Resident	Art 12, 5 UST 1094 Art. 20, 5 UST 1098	8 C.F.R. § 274a.12(b)(17) 8 C.F.R. § 274a.12(c)(7)
	Members of Official Staff, Secretary General, Assistant Secretary General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank; or Immediate Family.		
NATO-2	Other Representative of Member State to NATO (including any of Subsidiary Bodies) including Representatives, its Advisers and Technical Experts of Delegations, Members of Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the Protocol on the Status of International Military Headquarters; Members of such a Force if issued visas, or immediate family.	Art. 13, 5 UST 1094 Art. 1, 4 UST 1794	
NATO-3	Official clerical staff of representative of member state to NATO/subsidiary body or immediate family.	Art. 14, 5 UST 1096	
NATO-4	NATO officials other than those qualified as NATO-1 or immediate family members.	Art. 18, 5 UST 1098	
NATO-5	NATO experts other than those qualified as NATO-4 employed in NATO missions and immediate family.	Art. 21, 5 UST 1100	
NATO-6	Members of civilian component accompanying a force entering in accordance with NATO Status- of-Forces Agreement or attached to Allied Headquarters under "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty; and immediate family.	Art. 1, 4 UST 1794 Art. 3, 5 UST 877	
NATO-7	Attendant, Servant, or Personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO- 5, NATO-6, and immediate family.	Art. 12-20, 5 UST 1094-1098	8 C.F.R. § 274a.12(b)(18) 8 C.F.R. § 274a.12(c)(7)

0	Aliens with Extraordinary Ability (General)	101(a)(15)(O)	8 C.F.R. § 214.2(o)
		214(a)(2)(A)	8 C.F.R. § 274a.12(b)(13)
		214(c)(1), (3), (6)	
		214(c)(5)(B)	22 C.F.R. § 41.55
O-1	Aliens with extraordinary ability in sciences, arts,	101(a)(15)(O)(i)	8 C.F.R. § 214.2(o)(1)
	education, business, or athletics	214(c)(6)	8 C.F.R. § 214.2(o)(2)
			8 C.F.R. § 214.2(o)(3)
			8 C.F.R. § 274a.12(b)(13)
O-2	Alien accompanying/assisting O-1 performers or	101(a)(15)(O)(ii)	8 C.F.R. § 214.2(0)(4)
	athletes	214(c)(6)	8 C.F.R. § 274a.12(b)(13)
O-3	Spouse or child of O-1 or O-2	101(a)(15)(O)(iii)	8 C.F.R. § 214.2(o)(6)(iv)
0-5	Spouse of clinic of 0-1 of 0-2	101(a)(15)(0)(11)	8 C.I.K. § 214.2(0)(0)(1V)
Р	Athletes, Artists, and Entertainers (General)	101(a)(15)(P)	8 C.F.R. § 214.2(p)
		214(a)(2)(B)	8 C.F.R. § 274a.12(b)(14)
		214(c)(1), (4)	
		214(c)(5)(B)	22 C.F.R. § 41.56
P-1	Individual or Team Athletes; Group Entertainer	101(a)(15)(P)(i)	8 C.F.R. § 214.2(p)(4)
		214(c)(6)	8 C.F.R. § 274a.12(b)(14)
P-2	Individual/Group Artist or Entertainer in	101(a)(15)(P)(ii)	8 C.F.R. § 214.2(p)(5)
	Reciprocal Exchange Program		8 C.F.R. § 274a.12(b)(14)
P-3	Artist or Entertainer in Culturally Unique	101(a)(15)(P)(iii)	8 C.F.R. § 214.2(p)(6)
15	Program.	214(c)(6)	8 C.F.R. § 274a.12(b)(14)
P-4	Spouse or child of P-1, P-2, or P-3	101(a)(15)(P)(iv)	8 C.F.R. §
1+	Spouse of cliffd of 1 -1, 1 -2, of 1 -5	101(a)(13)(1)(1)	214.2(p)(8)(iii)(D)
			214.2(p)(8)(III)(D)
0.1	International Cultural Exchange Visitor	101(-)(15)(0)(:)	9 C E D = 8 214 2(-)
Q-1	International Cultural Exchange Visitor	101(a)(15)(Q)(i)	8  C.F.R.  \$ 214.2(q)
			8 C.F.R. § 274a.12(b)(15)
			22 CED \$ 41 57
0.0		101()/15)/(0)/(')/()	22 C.F.R. § 41.57
Q-2	Irish Peace Process Cultural and Training	101(a)(15)(Q)(ii)(l)	8 C.F.R. § 274a.12(c)(23)
	Program (Walsh Visas)		8 C.F.R. § 214.2(q)(15)
			8 C.F.R. §
			214.2(q)(15)(vii)(A)
Q-3	Spouse or child of Q-2	101(a)(15)(Q)(ii)(ll)	8 C.F.R. § 214.2(q)(15)
			8 C.F.R. §
			214.2(q)(15)(vii)(B)
D			
R	Religious Workers (General)	101(a)(15)(R)	8 C.F.R. § 214.2(r)
R-1	Religious Worker		8 C.F.R. § 274a.12(b)(16)
<b>D A</b>			22 C.F.R. § 41.58
R-2	Spouse or child of R-1		8 C.F.R. § 214.2(r)(8)
~			
S	Witness or Informant (General)	101(a)(15)(S)	8 C.F.R. § 214.2(t)
		212(d)(1)	8 C.F.R. § 248.2(b)
		214(k)	8 C.F.R. § 274a.12(c)(21)
		248(1)	
			22 C.F.R. § 41.83
S-5	Witness or informant regarding Criminal	101(a)(15)(S)(i)	8 C.F.R. § 274a.12(c)(21)
	Organization		8 C.F.R. § 214.2(t)(10)
S-6	Witness or informant regarding Terrorism	101(a)(15)(S)(ii)	
S-7	Spouse, child, or parent of S-5 or S-6	101(a)(15)(S)(ii)	8 C.F.R. § 214.2(t)(3)
			8 C.F.R. § 274a.12(c)(21)
Т	Victim of trafficking in persons & immediate	101(a)(15)(T)	8 C.F.R. § 214.11
	family.	212(d)(13)	22 C.F.R. § 41.84
		214(n)	8 C.F.R. § 274a.12(a)(16)
		()	8 C.F.R. § 274a.12(c)(25)
T-1	Victim of a severe form of trafficking in	101(a)(15)(T)(i)	8 C.F.R. § 274a.12(a)(16)
-	persons	214(n)	
T-2	Spouse of trafficking victim	101(a)(15)(T)(ii)	8 C.F.R. § 274a.12(c)(25)
T-3	Child of trafficking victim		5 511 11 5 <b>2</b> / <b>1</b> 012(0)(25)
T-4	Parent of trafficking victim under 21		
	r mont of dufficking vicuni under 21		

TN/TD/ NAFTA	North American Free Trade Agreement	214(e), (j)	8 C.F.R. § 214.2(b)(4) 8 C.F.R. § 214.6
TN-1	Canadian NAFTA Professional		0 0.1 .14. 3 21 1.0
TN-2	Mexican NAFTA Professional		8 C.F.R. § 274a.12(b)(19)
			22 C.F.R § 41.59
TD	Spouse or child of TN-1 or TN-2		8 C.F.R. § 214.6(j)
TWOV	Transit without a visa (Passenger or crew	212(d)(3)	8 C.F.R. § 212.1(f)
	admitted temporarily)		8 C.F.R. § 248.2(a)
			22 C.F.R. § 41.21
U-1	Victim of certain criminal activity	101(a)(15)(U)	22 C.F.R. § 41.12
U-2	Spouse of U-1 victim	212(d)(13)(0)	22 C.F.K. § 41.12
U-2 U-3	Child of U-1 victim	212(d)(15) 214 (o)	
U-4	Parent of U-1 victim under 21		
	· · ·		
V	Immediate Family of Legal Permanent Resident	101(a)(15)(V)	8 C.F.R. § 214.2(v)
V-1	Spouse of a Legal Permanent Resident who is the	214(h)	8 C.F.R § 214.15
	principal beneficiary of a family-based petition	214(o)	8 C.F.R. § 274a.12(a)(15)
V-2	Child of a Legal Permanent Resident who is the		8 C.F.R. §
	principal beneficiary of a family-based petition		274a.12(a)(15)(h)
V-3	Derivative Child of a V-1 or V-2.		22 C.F.R. § 41.86
	ļ		22 C.F.K. § 41.00

# **REFERENCES TO GENERAL REGULATORY PROVISIONS GOVERNING** <u>NONIMMIGRANTS<sup>4</sup></u>

8 C.F.R.			
§ 212.1	Documentary Requirements for Non-Immigrants		
§ 214.1	Requirements for Admission, Extension, and Maintenance of Status		
§ 214.2	Special Requirements for Admission, Extension, and Maintenance of Status		
§ 217	Visa Waiver Pilot Program		
§ 221	Admission of Visitors or Students		
§ 235	Inspection by Immigration Officers; Expedited Removal		
§ 240	Removal Proceedings		
§ 245	Adjustment of Status to that of a Person Admitted for Permanent Residence		
§ 248	Change or Extension of Nonimmigrant Classification (Change of Status)		
§ 274a	Control of Employment of Aliens		
§ 274a.12(b)	Aliens Authorized for Employment with a Specific Employer Incident to Status		
20 C.F.R.			
§ 655	Temporary Employment of Aliens in the United States		
22 C.F.R.			
§ 22.1	Schedule of Fees for Consular Services		
§ 41.11	Entitlement to nonimmigrant status		
§ 41.12	Classification symbols & corresponding INA Section		
§ 41.101	Application for Nonimmigrant Visa		
§ 41.102	Personal appearance of applicant.		
§ 41.103	Filing an application and form OF-156.		
§ 41.104			
§ 41.105	Supporting documents and fingerprinting		
§ 41.106	Processing		
<u>§ 41.107</u>	Visa fees		
§ 41.108	Medical Examination		
§ 41.111	Issuance of Nonimmigrant Visa		
§ 41.112	Validity of Visa		
§ 41.113	Procedures in issuing visas		
§ 41.121	Refusal of Nonimmigrant Visa		
§ 41.122	Revocation of Nonimmigrant Visa		
28 C.F.R.			
§ 44	Unfair Immigration-Related Employment Practices		

<sup>&</sup>lt;sup>4</sup> This list includes certain key regulations that concern immigrants, nonimmigrants, and other aliens. However, it is not an exclusive list of all regulations that may affect such persons. Please see generally Titles 8, 20, and 22.

# **OFFICE OF BUSINESS LIAISON**

### U.S. DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 108	EBISS: (800) 357-2099
	NCSC: (800) 375-5283
<b>Employment Authorization of Aliens</b>	TDD: (800) 767-1833
	Fax: (202) 272-1865
	Order Forms: (800) 870-3676
March 16, 2005	Website: <u>www.uscis.gov</u>

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

# **EMPLOYMENT AUTHORIZATION OF FOREIGN NATIONALS**

There is a direct relationship between an alien's status and the type of document issued to him or her by the Department of Homeland Security, U.S. Citizenship and Immigration Services. Employers should become familiar with the different category types.

# PERMANENT, UNRESTRICTED EMPLOYMENT

### Common evidence of work authorization:

- US passport (unexpired or expired)
- US birth certificate
- Permanent Resident Card (Resident Alien Card, Form I-551, and/or Alien Registration Receipt Card) also known as "Green Card"
- Unrestricted Social Security Card

### **Employment Available to:**

• US citizens, US Nationals Immigrants (Lawful Permanent Residents) Asylees and Refugees.

*Note*: Employers should know that <u>only</u> aliens who check the "lawful permanent resident" box on Form I-9 Section 1 would be authorized (but not required) to present a "Green Card" for Section 2 purposes.

# TEMPORARY, UNRESTRICTED EMPLOYMENT

### **Common Evidence of work authorization:**

- EAD
- Employment Available to: ....See 8 CFR 274a.12 for list of those eligible for an EAD, which can be accessed on www.uscis.gov.

To evidence work authorization that is temporary and unrestricted, an employee will show an employment authorization document (EAD on Form I-688B, Form I-766, or Form I-688A in certain legalization cases). EADs are issued to aliens for several different purposes. Common categories of EAD holders include aliens awaiting adjustment of status, fiancé(s) in K-1 status, and aliens granted Temporary Protected Status (TPS).

Employers may want to keep in mind that aliens who check the "alien authorized to work until [insert date]" box in I-9 Section 1 will be authorized to present an EAD for Section 2 purposes.<sup>1</sup> EADs are generally valid for one year. Similarly, the work authorization expiration date listed in I-9 Section 1 will often be the expiration date of the EAD presented for Section 2 purposes.

# **TEMPORARY, RESTRICTED EMPLOYMENT** (EMPLOYER-SPECIFIC)

**Common Evidence of work authorization:** Form I-94 Arrival-Departure Record showing endorsement of employer-specific classification and unexpired period of admission.

**Employment Available to:** Aliens granted employer-specific employment-based classifications, including A-1, A-2, and A-3, C-2 and C-3, E-1 and E-2, F-1 (for on campus employment and curricular practical training only, and only if presented with Form I-20 endorsed for the specific employment), G-1, G-2, G-3, G-4 and G-5, H-1b, H-1c, H-2a, H-2b, and H-3, I, J-1, L-1a and L-1b, O-1 and O-2, P-1, P-2 and P-3, Q, R-1, NATO, TN-1, and N–2. See 8 CFR 274a.12 for more information available at <u>www.uscis.gov</u>.

Employer-specific employment authorization is evidenced on the Form I-94, Arrival-Departure Record that aliens receive and must retain with their passports. Upon admission into the US, these forms are stamped or marked with the arriving aliens' immigration classification and with the period of authorized stay in the US under that classification. In order to be acceptable as proof of work eligibility, the stamp must specify that employment is authorized or indicate an unexpired nonimmigrant admission. A stamp indicating a nonimmigrant admission means that the alien may work for the approved employer(s) and for no other employer(s) until expiration of the indicated period of approved stay. Therefore, only US employers whose petitions to employ these aliens have been approved by the Department of Homeland Security, U.S. Citizenship and Immigration Services may accept this documentation to satisfy employment eligibility verification requirements of Form I-9. The employee can work for the petitioning employer(s) until the period of admission/work authorization approved by the Department of Homeland Security, expires. The back of Form I-94 may also be completed by which to indicate employment restriction for those aliens authorized to work temporarily only for a single employer. With limited exceptions, aliens are obligated to relinquish their I-94 when leaving the US.

# **UNAUTHORIZED**

- EWI (aliens who entered and remain in the US unofficially, without inspection) or PWI (present without inspection)
- Visitors (B-1 and B-2, including VWPP participants) (with few exceptions)
- Dependents of persons authorized to be employed incident to their status (including but not limited to H-4 and TD) except spouses of the L and E classification
- Dependents of students (F-2 and M-2)

<sup>&</sup>lt;sup>1</sup> A citizen of national of the United States or a permanent resident should not have an EAD as evidence of work authorization.

# **OFFICE OF BUSINESS LIAISON**

# U.S. DEPARTMENT OF HOMELAND SECURITY

Guide for U.S. BusinessesTDD: (800) 767-1833Hiring Temporary Employees from Outside the U.S.Fax: (202) 272-1865March 16, 2005Order Forms: (800) 870-3676
--

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

# NUTSHELL GUIDE FOR U.S. BUSINESSES EMPLOYING FOREIGN NATIONALS

# Immigration status<sup>1</sup> summary

- A national of the United States means a citizen of the United States, or a person who, though not a citizen of the United States owes permanent allegiance to the United States.
- An *immigrant* is a foreign-born person who has been approved for lawful permanent residence in the US. Immigrants have permanent, unrestricted eligibility for employment authorization. Evidence of immigrant status includes, but is not limited to, a Permanent Resident Card (Form I-551, Resident Alien Card, Permanent Resident Card, Alien Registration Receipt Card and/or "Green Card").
- A nonimmigrant is an alien who seeks temporary entry to the US for a specific purpose. There are approximately thirty types of nonimmigrant classifications. A nonimmigrant alien typically must maintain a permanent residence abroad and
   must qualify for the requested visa classification. Furthermore, a nonimmigrant status may or may not permit employment. See discussion below in section titled *Eligibility for Employment*.
- A *refugee* is an alien who has been granted admission to the US following an official determination that (s)he is unable or unwilling to return to the home country because of actual or well-founded fear of persecution on account of race, religion, nationality, and membership in a particular group, or political opinion.
- An asylee is an alien who was granted political asylum <u>after</u> entering the US following an official determination that (s)he is unable or unwilling to return to the home country because of actual or well-founded fear of persecution on account of race, religion, nationality, membership in a particular group, or political opinion.

### **Understanding Visas**

Visa is a term that is often used loosely as to be confusing to those who are not familiar with immigration law. Technically, a visa is a travel document issued by a US consulate abroad that allows the alien to whom it is issued to travel to the US (e.g. to board plane, train or ship) to apply for admission at a US port of entry. If an alien who should, but does not, have a visa arrives at a US port of entry, the alien may be returned at the carrier's expense to the home country or to the port of departure. Except for Canadian citizens who are visa exempt (with some exceptions), aliens with Border Crossing Cards, and aliens traveling on the Visa Waiver Program (see below), all aliens are expected to present valid visas not only for purposes of travel to the US, but which comport with the classifications under which they seek admission to the US for purposes of inspection by the Department of Homeland Security.

US consular officers interview visa applicants to determine whether the alien is eligible for the particular classification and whether the alien is admissible. A key issue in visa issuance is whether the alien has established that he or she will comply with the terms of his or her admission. As stated earlier, most nonimmigrant aliens must establish that they intend to remain temporarily in the United States and will return abroad prior the expiration of their period of authorized admission. However, because the law distinguishes among nonimmigrant aliens who may have *immigrant intent* (i.e. to remain in the US permanently), those who **must** have *nonimmigrant intent* (i.e. to remain in the US temporarily for the purposes permitted under the admission classification), and those who may have *dual intent* (i.e. may seek admission for a temporary purpose while independently pursuing a related or unrelated purpose to remain in the US permanently), determination of the *intent* of an alien seeking travel or admission to the US is an important issue.

<sup>&</sup>lt;sup>1</sup> In general, a person's immigration "status" is determined at time of entry and reflected on the alien's Form I-94, but an alien may change his or her status subsequent to his or her entry into the United States.



You can find general information on citizenship and immigration, on-line form filing and downloadable forms, and on-line case status information at our website at <u>www.uscis.gov</u> or by calling (800)375-5283.

If you require an accommodation due to a communication disability (i.e., speech impediment, hearing loss/deafness or sight loss/blindness), please do NOT make your InfoPass appointment using this online tool. Please call the National Customer Service Center (NCSC) at 1-800-375-5283 (TDD: 1-800-767-1833). USCIS will determine if an accommodation is appropriate and, if so, make the arrangements and schedule your appointment.

Please note: you do not need to contact the NCSC to request an accommodation for a physical disability or impairment (e.g., inability to climb stairs) as all USCIS facilities are handicapped accessible in compliance with the Rehabilitation Act.

Please enter your *home* zip code if you are in the US Zip Code:

OR

choose your Country (and State/Province if applicable) of Residence if you are not in the US.

Country: UNITED STATES OF AMERICA



On the web at <u>www.uscis.gov</u> or call National Customer Service Center (NCSC) at 1.800.375.5283 TDD for the hearing impaired - 1.800.767.1833

Click the link below to send an email to CIS Customer Service to report a problem you encountered while making an appointment or to report abuse by individuals or organizations who sell InfoPass appointments.

Feedback to USCIS

# UNITED STATES DEPARTMENT OF JUSTICE

**Executive Office for Immigration Review** 



### As of December 2009

(For the Immigration Court Practice Manual, effective July 1, 2008, click here)

Office of the Chief Immigration Judge 5107 Leesburg Pike, Suite 2500 Falls Church, VA 22041 (703) 305-1247

Brian M. O'Leary, Chief Immigration Judge

Michael C. McGoings, Deputy Chief Immigration Judge

Assistant Chief Immigration Judges Areas of Responsibilities Report Concerns/Complaints About IJ Conduct Report Concerns/Complaints About Interpreters

> Burr, Sarah M. Dean, Larry R. Dufresne, Jill H. Fong, Thomas Y. K. Griswold, Stephen S. Keller, MaryBeth Romig, Jeffrey L. Smith, Gary W. Sukkar, Elisa M. Weil, Jack H.

Immigration Courts are listed alphabetically first by state, then by city within that state.

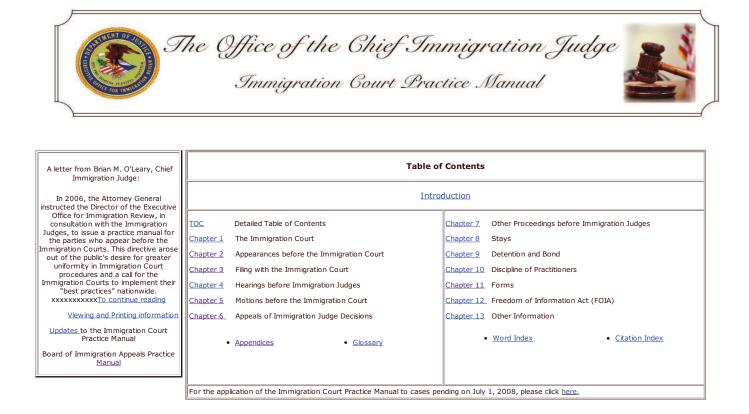
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California	Maryland	New York	Tennessee
Colorado	Massachusetts	North Carolina	Texas
Connecticut	Michigan	Northern Mariana Islands	Utah
Florida	Minnesota	Ohio	Virginia
Georgia	Missouri	Oregon	Washington
Hawaii	Nebraska	Pennsylvania	
Illinois	Nevada		

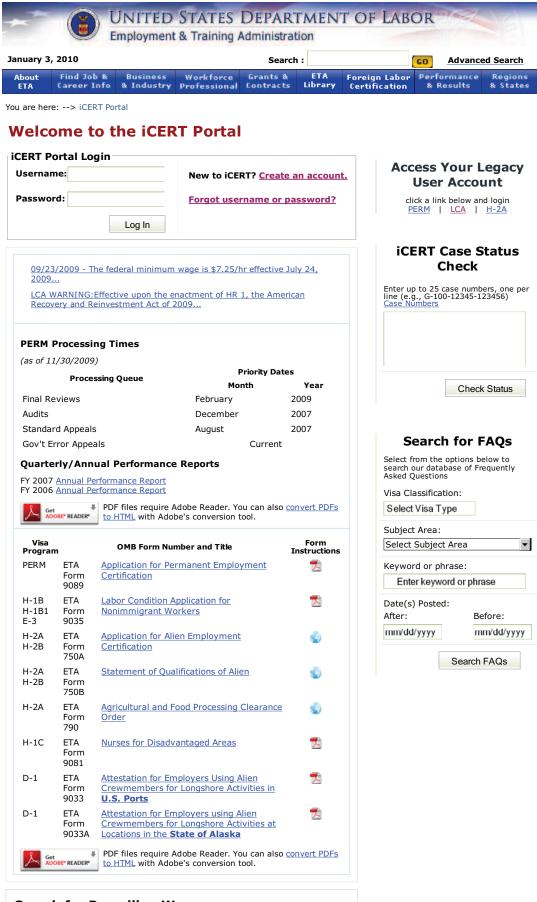
List of Administrative Control Courts

Arizona			
Court	Address	Immigration Judges	Court Administrator
Eloy	1705 E. Hanna Rd. Suite 366 Eloy, AZ 85131 (520) 466-3671	DeVitto, James Feldman, Irene Phelps, Richard Spencer-Walters, Linda	Padilla, Victoria
Florence	3260 N. Pinal Parkway Ave. Florence, AZ 85132 (520) 868-3341	Taylor, Bruce A. Jefferies, Scott M.	Patterson, Lizbeth L.
<u>Phoenix</u>	200 East Mitchell Drive, Suite 200 Phoenix, AZ 85012 (602) 640-2747	Freerks, LaMonte S. Hollis, Wendell Richardson, John W.	Patterson, Lizbeth L.
Tucson	160 N. Stone Ave. Suite 300 Tucson, AZ 85701-1502 (520) 670-5212	Keenan, Sean H. O'Leary, Thomas M.	Graff, Corey

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California			
Court	Address	Immigration Judges	Court Administrator
<u>East Mesa</u>	East Mesa CCA 446 Alta Road San Diego, CA 92158 (619) 661-3327	De Paolo, Zsa Zsa	Perkins, Brent L.
El Centro	1115 North Imperial Avenue El Centro, CA 92243 (760) 353-2328		Silva, Isabel (Acting)
mperial	2409 La Brucherie Road Imperial, CA 92251 (760) 355-0070	James, Dennis R. Staton, Jack W.	Silva, Isabel (Acting)
<u>ancaster</u>	Mira Loma Facility 45100 N. 60th St., West Lancaster, CA 93536 (661) 942-8633	Burke, David Laurent, Scott Vicars, Robert O.	Sosa, Graciela
Los Angeles	606 S. Olive St., 15th Floor Los Angeles, CA 90014 (213) 894-2811	Anderson, David C. Bakke Varzandeh, Joyce Bank, Ira E. Bass, Lori Bither, Christine A. Bronzina, Isabel A. Daw, Alison DiMarzio, Philip Dunkel-Bradley, Dorothy Fong, Thomas Y.K. Giattina, Anthony T. Ho, Anna Latimore, Jan D. Little, Monica Martin, Jr., William J. Munoz, Lorraine J. Naselow-Nahas, Tara Parchert, Brett M. Peters, Rose C. Riley, Kevin Rodriquez de Jongh, Lourdes Rooyani, Rodin Sholomson, Stephen L. Sitgraves, D.D. Stancill, Christine E. Tabaddor, A. Ashley Travieso, Frank Tsankov, Mimi Vahid-Tehrani, Gita Walsh, John F. Walton, Richard D.	Perkins, Stephen P.
<u>San Diego</u>	401 West "A" Street, Suite 800 San Diego, CA 92101 (619) 557-6052	Atenaide, Anthony Bagley, Kenneth A. Bartolomei, Jr., Richard J. Fernandez, Ignacio P. Ipema, Jr., Henry Renner, Renee L. Williams, John C.	Perkins, Brent L.
San Francisco	120 Montgomery Street, Suite 800 San Francisco, CA 94104 (415) 705-4415	DiCostanzo, Lawrence N. Geisse, Loreto Griswold, Stephen Hayward, Miriam R. King, Carol A. Maggard, Robert Print Marks, Dana Leigh Murry, Anthony S. Phan-Quang, Tue Ramirez, Laura L. Stockton, Bette Kane Teeter, Marilyn J. Webber, Polly A. Yamaguchi, Michael J. Yeargin, Robert	Jauregui, Maria





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Updated: July 31, 2009

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# **Board of Immigration Appeals**

Appeals and Motions Information

As part of the Board of Immigration Appeals' overall effort to enhance customer service, the Board has issued the three attached documents to provide basic information to persons involved in proceedings before the Board and to answer frequently asked questions about appeals and motions.

Update(s): Click here for an overview of the revisions to the BIA Practice Manual and Questions and Answers Regarding Proceedings.

### **Questions and Answers Regarding** Proceedings The Practice Manual guides attorneys and representatives on practice before the Board.

The answers to questions often asked by people with cases before the Board. (Download Full PDF; 207k)

Questions and Answers Regarding Oral Argument

Guides attorneys and representatives through the oral argument process. Download Full PDF; 35k

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**BIA Practice Manual** 

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Practice Advisory: Unlawful Presence and INA §§ 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I): A summary of the <u>May 6, 2009 Interoffice Memorandum from Donald Neufeld, Lori</u> Scialabba, and Pearl Chang revising the Adjudicator's Field Manual.

## By Laura L. Lichter and Mark R. Barr

On May 6, 2009 USCIS issued an Interoffice Memorandum on the "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act." The memo, co-authored by Donald Neufeld, Acting Associate Director of the Domestic Operations Directorate, Lori Scialabba, Associate Director of the Refugee, Asylum and International Operations Directorate, and Pearl Chang, Acting Chief of the Office of Policy and Strategy, aims to provide "comprehensive guidance to adjudicators concerning the accrual of unlawful presence and the resulting inadmissibility," with the policies previously articulated in a variety of Service memoranda on the subject incorporated into a newly designated section of the Adjudicator's Field Manual (AFM).

For the most part, the comprehensive memo simply reiterates guidance previously provided on the subject over the course of the last 10+ years, however there are some troubling departures from prior practice. This advisory is designed as a summary of the lengthy (51 pages) memo, but with additional practice pointers sprinkled throughout addressing items that are new, noteworthy, controversial, or, in at least one instance, simply erroneous.

While the Service should be applauded for its helpful re-packaging of various agency policies into one comprehensive document, practitioners should also be on the alert for those issues in the memo that revamp prior agency interpretations without the issuance of formal regulations, with their attendant notice and comment periods, a practice increasingly relied upon by USCIS. Practitioners are urged to raise this issue in all appropriate circumstances, and not simply allow the agency to skirt its obligation to follow formal rule-making procedures.

## I. <u>The Three and Ten Year Bars</u>

→ Section 212(a)(9)(B)(i)(I) makes inadmissible any alien who "was unlawfully present in the United States for a period of more than 180 days but less than 1 year . . . [who] again seeks admission within 3 years of the date of such alien's departure or removal." Likewise, section 212(a)(9)(B)(i)(II) makes inadmissible any alien who "has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's removal or departure."

**Practice pointer**: The detailed memo pointedly leaves out any discussion of whether or not a person subject to either bar can "cure" her inadmissibility through time spent inside the U.S.

Such guidance would have been helpful, since the statute itself is silent on the question of whether an alien subject to either bar can wait for the requisite three or ten years to pass while inside the U.S.

In an unpublished decision, the Service's Administrative Appeals Office (AAO) interpreted the statute to mean that an applicant for adjustment of status can satisfy the three year bar to admission through time spent outside <u>or</u> inside the U.S. *See In re Salles-Vaz* (AAO, Feb. 22, 2005). In *Salles-Vaz*, the AAO held that an adjustment application initially inadmissible under 212(a)(9)(B)(i)(I) was no longer barred by that provision, as more than three years had passed from the date of his last departure to the date of its decision. The AAO stated:

The passage of time has created a new circumstance which renders the applicant free from any bar to inadmissibility based upon his unlawful presence. [...] It is apparent, therefore, that the applicant's period of inadmissibility has now expired and he is no longer subject to the bar. Consequently, although the AAO does not agree with counsel's arguments as to why the bar never applied to the applicant in the first place, at this point the bar has lapsed and no longer affects the applicant's admissibility. Therefore, unless he has departed from the United States within three years prior to the date of this decision, the applicant is no longer required to seek a waiver of inadmissibility in connection with his adjustment of status application.

In correspondence with private counsel, the Service has similarly confirmed this view, as its' Chief Counsel has written that "the inadmissibility period continues to run even if the alien is paroled into the United States or is lawfully admitted as a nonimmigrant under section 212(d)(3), despite his or her inadmissibility under section 212(a)(9)(B)." *See* Letter from Lynden Melmed to Daniel C. Horne, January 26, 2009, and from Robert Divine to David P. Berry, July 14, 2006, posted at AILA InfoNet as Doc. No. 09012874.

The Service' curious decision not to incorporate this guidance into its latest re-packaging of interpretations on ULP is hopefully a passive endorsement of the above view, and not an indication that the policy will be revamped in the coming days.

- → An individual must <u>leave</u> the U.S. after accruing the requisite period of unlawful presence (ULP) in order to trigger either bar. Departures include those made under advance parole or with a valid refugee travel document.
- $\rightarrow$  For both bars, any period of ULP accrued prior to April 1, 1997 will not count towards the period of time needed to trigger the bars.
- $\rightarrow$  For both bars, the filing of a Notice to Appear (NTA) does not stop the accrual of ULP.
- $\rightarrow$  Both bars can be waived pursuant to INA § 212(a)(9)(b)(v).

- $\rightarrow$  Despite a finding of inadmissibility under either bar, an individual may still be eligible for the following benefits:
  - $\rightarrow$  Registry under INA § 249.
  - $\rightarrow$  Adjustment of status under section 202 of NACARA.
  - $\rightarrow$  Adjustment of status under section 902 of HRIFA.
  - $\rightarrow$  Adjustment of status under INA § 245(h)(2)(A).
  - $\rightarrow$  Change to V nonimmigrant status under 8 CFR § 214.15.
  - → LPR status pursuant to LIFE Legalization, under which provision a LIFE Act applicant may travel with authorization during the pendency of the application without triggering the three or ten year bar.

# A. The Three Year Bar

- → For the three year bar to apply, the individual must have accumulated at least 180 days, but less than one year, of ULP, and then voluntarily departed the U.S. prior to the commencement of removal proceedings. There is no requirement for a formal grant of voluntary departure.
- → For the three year bar to apply, the individual must have departed prior to the filing of an NTA with the Immigration Court. An individual who voluntarily depart <u>after</u> the NTA was filed with the court is not subject to the three year bar (but may become subject to the ten year barif she fails to leave before she accumulates more than one year of ULP)<sup>1</sup>.

# B. <u>The Ten Year Bar</u>

- $\rightarrow$  For the ten year bar to apply, the individual must have accumulated more than one year of ULP, and then either voluntarily departed the U.S. or been removed from the U.S.
- $\rightarrow$  Unlike the three year bar, the ten year bar applies even if the individual leaves after the commencement of removal proceedings.

# II. <u>The Permanent Bar</u>

→ Under INA § 212(a)(9)(C)(i)(I), an individual is who has been ULP in the U.S. for an aggregate period of more than one year and who enters, or attempts to enter, the U.S. without being admitted is permanently inadmissible.

<sup>&</sup>lt;sup>1</sup> Note: the person may also become subject to inadmissibility if s/he departs without first terminating removal proceedings or receiving a grant of Voluntary Departure under INA § 240B(a) if the Immigration Judge enters an *in abentia* removal due to the person's failure to appear at his or her removal proceeding.

- $\rightarrow$  For purposes of the permanent bar, an individual's ULP is counted in the aggregate. Therefore, if a person accrues a total of more than one year of ULP, whether during a single stay or multiple stays, she will be subject to the permanent bar if she departs the U.S. and then enters, or attempts to enter, without inspection.
- $\rightarrow$  Any period of ULP accrued prior to April 1, 1997 will not count towards the period of time needed to trigger the permanent bar.
- $\rightarrow$  An individual cannot violate the provision unless she departs the U.S. and then returns or attempts to return without being admitted.
- → An individual subject to INA § 212(a)(9)(C)(i)(I) may seek consent to reapply for admission after having been outside of the U.S. for at least ten years, pursuant to INA § 212(a)(9)(C)(ii) and 8 CFR § 212.2.
  - → INA § 212(a)(9)(C)(i)(I) is considered by the Service to be a permanent bar for which neither the retroactive nor the prospective grant of consent to reapply is possible. *Matter* of Torres-Garcia, 23 I & N Dec. 866 (BIA 2006). Under this interpretation, while the regulation at 8 CFR § 212.2 continues to dictate the filing procedures of a Form I-212 waiver, the substantive requirements are governed by INA § 212(a)(9). Therefore, an I-212 applicant must be physically outside the U.S. for a period of at least ten years since her last departure before becoming eligible to be granted consent to reapply.<sup>2</sup>
- $\rightarrow$  An individual who accumulated more than one year of ULP, but is later paroled into the U.S. (but not "admitted") is <u>not</u> subject to the permanent bar as a result of the parole entry. Where an individual has made prior entries, or attempted entries, without inspection prior to the entry on parole, however, that individual would be subject to the ten year bar.
- → The requirement for a ten year absence does not apply to a VAWA self-petitioner seeking a waiver under INA § 212(a)(9)(C)(iii).
- $\rightarrow$  Despite a finding of inadmissibility under the permanent bar, an individual may still be eligible for the following benefits:
  - $\rightarrow$  Registry under INA § 249.

<sup>&</sup>lt;sup>2</sup> See related practice advisory regarding *Duran Gonzales*, a circuit-wide class action challenging DHS' refusal to follow *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). In *Duran Gonzales*, the Ninth Circuit overturned *Perez-Gonzalez*, deferring to the BIA's holding that individuals who have previously been removed or deported are not eligible to apply for adjustment of status (under INA § 245(i)) along with an accompanying I-212 waiver application. See http://www.ailf.org/lac/lac\_lit\_92806.shtml.

**Practice Pointer**: Perhaps destined to be the memo's most controversial item is the agency's explicit instruction to its adjudicators to ignore controlling circuit court precedent regarding the availability of section 245(i) relief for those individuals subject to the permanent bar under section 212(a)(9)(C)(i)(I).

As practitioners are aware, adjustment under INA § 245(i) allows a person to adjust status notwithstanding the fact that he or she entered without inspection, overstayed, or worked without authorization. However, section 245(i) does not necessarily waive every ground of inadmissibility, and questions arise where that provision conflicts with a ground of inadmissibility under section 212(a) that relates to entry without inspection.

In *Matter of Briones*, 24 I & N Dec. 355 (BIA 2007), the Board ruled that section 245(i) does <u>not</u> cure a person's inadmissibility under the permanent bar, at section 212(a)(9)(C)(i)(I). Prior to the Board's decision, however, both the Ninth and Tenth Circuit Court of Appeals had come to the opposite conclusion, holding that section 245(i) <u>does</u> apply to people inadmissible under section 212(a)(9)(C)(i)(I). *See Acosta v. Gonzales*, 439 F.3d 550 (9th Cir. 2006), *Padilla-Caldera v. Gonzales*, 453 F.3d 1237 (10th Cir. 2006).

Now, understandably, both decisions are likely to come under increasing attack by ICE, and are likely to face a *Brand X*<sup>3</sup> type argument in future litigation. *Acosta* is particularly vulnerable to future judicial review, as it was based on a case that was subsequently reversed. *See Gonzales v*. *DHS*, 508 F.3d 1227 (9<sup>th</sup> Cir. 2007) (reversing the court's prior decision in *Perez-Gonzales v*. *Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004)).

However, unless and until *Acosta* and *Padilla-Caldera* are overturned, they remain controlling law in their respective circuits. Therefore, it comes as quite a shock that the Service would explicitly instruct its examiners to ignore the law. The memo states:

USCIS adjudicators will follow *Matter of Briones* and *Matter of Lemus* in all cases, regardless of the decisions of the 9<sup>th</sup> Circuit in *Acosta v. Gonzales*... or of the 10<sup>th</sup> Circuit in *Padilla-Caldera v. Gonzales*. Following these Board cases, rather than *Acosta* or *Padilla-Caldera*, will allow the Board to reexamine the continued validity of these court decisions.

Again, the desire of the Service to have a uniform policy is understood, and ICE litigators, operating within an adversarial process, would arguably have good-faith reasons for seeking

<sup>&</sup>lt;sup>3</sup> In *Brand X*, the Supreme Court reviewed the issue of deference to an agency interpretation of a statute that conflicts with a circuit court's prior interpretation of a statute. *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005). According to *Brand X*, in limited circumstances, an agency may disagree with a circuit court decision and offer a different interpretation of a statute where the prior court decision was based on an ambiguous statute.

appellate review of future Immigration Judge decisions based on *Acosta* or *Padilla-Caldera*. Yet this should not deter practitioners from resisting the Service policy to ignore existing precedent in their circuits. It is another thing altogether for Service adjudicators—who should apply the existing law in a neutral fashion within a non-adversarial examination procedure—to advance the government's litigation tactics.

# III. Unlawful Presence

- $\rightarrow$  Unlawful presence (ULP) is defined as presence after the expiration of the <u>period of stay</u> <u>authorized by the Secretary of Homeland Security (formerly "POSABAG," when authorized</u> under the authority of the Attorney General), or any presence without being admitted or paroled.
  - $\rightarrow$  An individual who is present in the U.S. without inspection accrues ULP from the date of the unlawful arrival, unless she is otherwise protected from the accrual of ULP.
  - → Similarly, an individual paroled into the U.S. will accumulate ULP once the parole is no longer in effect, unless she is otherwise protected from the accrual of ULP.
  - → Note that an individual who obtained permission to come into the U.S. by making a knowingly false claim to U.S. citizenship has not been inspected and admitted, and thus accrues ULP from the date of arrival.
- $\rightarrow$  For many individuals, the "POSA" is noted on the I-94. Other POSAs have been created by statute or by USCIS policy.
- $\rightarrow$  Unlawful <u>status</u> and ULP are related, but distinct, concepts. On the one hand, a person <u>in</u> lawful status cannot accrue ULP. However, a person <u>not</u> in lawful status may or may not accumulate ULP.

# A. <u>No ULP due to lawful status</u>

- $\rightarrow$  A person in any of the following lawful statuses <u>cannot</u> accumulate ULP:
  - 1. <u>Lawful permanent residents</u>. An LPR does not accrue ULP, unless the individual becomes subject to an administratively final order of removal—at which point she will begin to accumulate ULP the day after the order becomes administratively final.
  - 2. <u>Lawful temporary residents</u>. A lawful temporary resident does not accrue ULP unless and until DHS issues a notice of termination following proper notice. If the person appeals the termination, ULP does not accrue during the appeal process. However, because termination cannot be reviewed by an Immigration Judge, ULP would accrue during removal proceedings or while a Petition for Review was pending in federal court.

- **3.** <u>Conditional permanent residents</u>. A conditional permanent resident will only begin to accrue ULP after the following:
  - $\rightarrow$  The entry of an administratively final order of removal.
  - → Automatic termination of status pursuant to INA §§ 216(c)(2), 216A(c)(2), 216(c)(4) for failure to file a petition to remove the conditions in a timely manner, or failure to appear for the personal interview in connection with that petition. However, if a late petition is subsequently accepted and approved, no ULP will have accrued.
  - $\rightarrow$  Termination following notice by DHS, where the individual does not seek review of the termination in removal proceedings.
  - $\rightarrow$  The issuance of an administratively final removal order affirming DHS termination of conditional resident status.
- 4. <u>Persons granted Cancellation of Removal or Suspension of Deportation</u>. An individual who had already acquired LPR status and is then granted Cancellation of Removal (or Suspension of Deportation) will retain her LPR status. Therefore, no period of ULP would accrue. An individual who was not already an LPR and is then granted Cancellation of Removal (or Suspension of Deportation) becomes an LPR on the date of the grant and will stop accumulating ULP. Any ULP that accrued prior to the grant is eliminated for purposes of future applications for admission.
- 5. <u>Lawful nonimmigrants</u>. Such individuals only begin to accrue ULP as follows:
  - $\rightarrow$  Nonimmigrants admitted until a certain date will generally begin to accrue unlawful presence the day following the date noted on the I-94.
  - → If USCIS finds, while adjudicating a request for an immigration benefit, that the individual has violated her nonimmigrant status, ULP will begin to accrue the day after USCIS denies the benefit, or the day after the I-94 expires, whichever is earlier. If an Immigration Judge makes a determination of status violation, then ULP begins to accrue the day after the I-94 expires, or the day after the order becomes final (i.e., after appeal is waived or dismissed)—not the date of any interim finding on the matter, whichever is earlier.
  - → Nonimmigrants admitted for duration of status or "D/S" will begin to accrue ULP the day after USCIS denies a request for an immigration benefit if the USCIS finds an immigration status violation while adjudicating the request. If an Immigration Judge makes a determination of status violation, then ULP begins to accrue the day after the order becomes final.
    - $\rightarrow$  Nonimmigrants not issued an I-94 will be treated the same as nonimmigrants admitted for duration of status for ULP purposes.

**Practice Pointer**: Taking guidance from the Department of State (DOS), the memo makes it clear that Canadians, and other non-controlled nonimmigrants, who are inspected at the border but not given I-94s, are treated as nonimmigrants admitted for the duration of status for purposes of determining ULP. *See* section (b)(1)(E)(iii). While this has been an unarticulated Service policy for some time, the only prior written statement of the policy came in a DOS cable from 1999. *See* Cable, DOS, 97-State-23545, *reprinted in* 76 No. 41 *Interpreter Releases* 1552-53 (Oct. 25, 1999). The memo's clear statement on the issue should hopefully prevent any future confusion with Service examiners unfamiliar with the previously unwritten policy.

- 6. <u>Refugees</u>. For refugees, the POSA begins on the date of admission as a refugee. ULP begins to accrue on the day after refugee status is terminated. For a derivative refugee, the POSA begins on the day she enters the U.S. as an accompanying or follow-to-join refugee. If the derivative refugee is already inside the U.S., her POSA begins when USCIS accepts an I-730 filed on her behalf. If the I-730 is subsequently denied, ULP will begin to accrue on the day after the denial. While the filing of an I-730 will stop the accrual of ULP, it does not eliminate any previously accumulated ULP. Therefore, the beneficiary of an I-730 who accrued ULP prior to the petition's filing may be inadmissible if she travels while the petition is pending, even with advance parole.
- 7. <u>Asylees</u>. For asylees, the POSA begins on the date a bona fide asylum application is filed. Prior periods of ULP, however, are not eliminated by either the filing of an asylum application, or a grant of asylum. If asylum status is later terminated, ULP begins to accrue the day after termination. The POSA for a derivative asylum applicant begins on the date the principal applicant begins her POSA. Finally, a derivative beneficiary not initially included on the principal's asylum application will start her POSA on the date a qualifying asylee files an I-730.
- 8. <u>Individuals Granted Temporary Protected Status (TPS)</u>. Individuals granted TPS are deemed to be in lawful status for the duration of the grant for the purposes of adjustment of status and change of status. A TPS grant, however, does <u>not</u> cure any previous accumulations of ULP. Accordingly, a person granted TPS who travels outside the U.S. may nonetheless trigger the ULP bars if she had accrued sufficient ULP prior to the TPS grant. Additionally, a waiver granted for inadmissibility under INA §§ 212(a)(9)(B) or (C) for purposes of the TPS application would not cure inadmissibility for a subsequent adjustment of status, since the standards for the TPS waiver are different than those used for adjustment.

**9.** <u>**Parolees**</u>. Individuals paroled into the U.S. do not accumulate ULP for the duration of the parole period, unless parole authorization is revoked or terminated prior to its expiration date. An individual paroled for removal proceedings will begin to accumulate ULP the day after the issuance of an administratively final removal order (unless otherwise protected from ULP accrual). Practitioners should take note that where an individual is paroled in for a particular purpose (e.g., adjustment of status) that the underlying parole be maintained through the pendency of the application.

### B. No ULP despite unlawful status

 $\rightarrow$  There are a variety of situations where a person may <u>not</u> be in lawful status, but is still not accumulating unlawful presence.

**Practice Pointer**: The memo emphasizes the point that while an individual may be in a POSA, she may not necessarily be in status. This distinction can be found in several Service memos over the years.

Of course, lurking beneath the POSA/lawful status distinction has been the more critical question of whether someone not in a lawful status, but otherwise POSA, has a "right" to remain in the U.S., especially an individual with a pending application for benefit (including changes or extension of status, or adjustment). Officials at Immigration and Customs Enforcement (ICE) have maintained—with a notably increased frequency—that such individuals are <u>only</u> allowed to remain in the U.S. as a matter of agency grace, and that nothing prevents their referral in removal proceedings due to their status violations, notwithstanding their authorized periods of stay.

With the issuance of this memo, USCIS has clearly joined with ICE, stating that the Department of Homeland Security "may permit" an out-of-status individual to remain in the U.S., where that person has a pending application that stops the accrual of ULP. According to the memo, such a decision is entirely a "matter of prosecutorial discretion."

One hopes that the memo's clarification on this point is simply a matter of more formally stating a previously held position, and not, as some fear, an indication that the Department will increasingly choose <u>not</u> to exercise its prosecutorial discretion, placing people with pending adjustment applications in removal proceedings.

### 1. <u>No ULP by operation of statute</u>

→ In some cases, an out-of-status individual does not accrue ULP by operation of statutory exceptions in INA § 212(a)(9)(B). The Service has interpreted these exceptions to <u>only</u> apply to inadmissibility under the three and ten year bars and <u>not</u> to the permanent bar.

**Practice Pointer**: The memo makes clear that the exceptions to ULP, at INA § 212(a)(9)(B)(iii), apply <u>only</u> to the grounds of inadmissibility listed in section 212(a)(9)(B), and <u>not</u> section 212(a)(9)(C). In other words, an individual who does not accumulate ULP for purposes of the three and ten year bars, by operation of the statutory exceptions, <u>does</u> accumulate ULP for purposes of the permanent bar.

On the one hand, this is a longstanding agency interpretation, articulated as far back as 1997 in an Office of Programs memorandum. *See* "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," June 17, 1997, Office of Programs.

On the other hand, as many practitioners are well aware, many U.S. consulates—most notably the consulate in Ciudad Juarez—made an exception to the interpretation as it related to minors. In recent practice at CDJ, the "minor exception" was applied to the permanent bar. Under that interpretation, for example, a child who was unlawfully present in the U.S. longer than one year, then taken back to Mexico by his parents and subsequently brought back into the U.S. without inspection—while still a child—did not face inadmissibility under either the 10-year bar or the permanent bar.

In the summer of 2008, the Visa Office directed CDJ to cease applying the "minor exception" to ULP findings under the permanent bar, relying principally upon INS guidance on the issue. *See* "Practice Alert – Unlawful Presence Under INA § 212(a)(9)(C) Applied to Minors," August 18, 2008, posted on AILA InfoNet as Doc. No. 08081872. The current memo's reiteration of this "old" policy, therefore, minimizes any possibility of the Visa Office reversing course in the near future.

The statutory exceptions include the following:

- a. <u>A minor under the age of 18</u> does not accrue ULP for purposes of the three and ten year bars until the day after her 18<sup>th</sup> birthday.
- **b.** <u>An individual with a pending bona fide asylum application</u>—affirmative or defensive--does not accrue ULP for purposes of the three and ten year bars unless she works without authorization.
  - $\rightarrow$  A bona fide application is non-frivolous, properly filed, and one with a reasonably arguable basis in fact or law. A later denial of the claim is not determinative of whether the claim was bona fide. Similarly, an abandoned claim is not automatically deemed not bona fide.

- $\rightarrow$  The pendency of a bona fide asylum application includes administrative <u>and</u> judicial review.
- $\rightarrow$  A person included on the principal's asylum application is in a POSA as of the date the principal enters a POSA, unless the derivative beneficiary works without authorization or the application for the derivative is not bona fide.
  - → A derivative beneficiary's asylum claim is no longer considered pending once: (1) the principal applicant informs USCIS that the dependent is no longer a part of the application; or (2) USCIS determines that the dependent relationship no longer exists. In these cases, the derivative will begin to accrue ULP once USCIS removes her from the principal application. If the derivative later files her own, bona fide asylum application, ULP will stop accumulating on the date of the filing.
    - → Note that under the Child Status Protection Act, a derivative child who turns 21 while the asylum application is pending (and is unmarried) will continue to be classified as a child and will therefore not accrue any ULP.
  - $\rightarrow$  An derivative beneficiary who was <u>not</u> included on the principal's asylum application will enter a POSA when the qualifying asylee files an I-730.
- c. <u>An individual with a pending I-730</u> does not accumulate ULP for purposes of the three and ten year bars. If the I-730 is later denied, ULP accrual would begin, unless the individual was otherwise protected from ULP. The filing of a bona fide I-730 does <u>not</u>, however, cure any prior accumulation of ULP. Therefore, a person with a pending I-730 who had previously accumulated the requisite periods of ULP may be inadmissible upon return to the U.S. and need to file an I-602.
- d. <u>A beneficiary of Family Unity Protection (FUP) under the Immigration Act</u> of 1990 § 301 is protected from accruing ULP for purposes of the three and ten year bars. If the FUP application is approved, ULP is deemed to stop as of the date of filing. However, the filing of the FUP application by itself does not stop the accrual of ULP. Finally, a grant of FUP protection does not cure prior periods of ULP.
- e. <u>Certain battered spouses, parents and children</u> are protected from accumulating ULP. An approved VAWA self-petitioner, and her children, can claim an exception from the three and ten year bars where there is a substantial connection between the abuse, the ULP, and her departure from the U.S.
- **f.** <u>Victims of severe form of trafficking in persons</u> do not accumulate ULP towards the three and ten year bars. Similar to VAWA beneficiaries, a trafficking

victim must demonstrate that the trafficking was at least once central reason for the ULP.

g. <u>A nonimmigrant with a pending extension of status (EOS) or change of</u> <u>status (COS) request</u>, according to the statute, does not accrue ULP for a period of up to 120 days for the purpose of the three year bar only, so long as: (1) the application was timely, (2) the individual was lawfully admitted or paroled into the U.S., and (3) the individual did not engage in unauthorized employment.

By operation of Service policy, however, this exception has been extended to cover the <u>entire</u> period during which an EOS or COS is pending, and to the ten year bar.

### 2. <u>No ULP under Service policy</u>

- → In some cases, an out-of-status individual does not accrue ULP by operation of USCIS policy. These policy exceptions, which apply to both the three and ten year bars and the permanent bar at INA § 212(a)(9)(C)(i)(I), include the following:
  - a. <u>An individual with a properly filed, pending application for adjustment of</u> <u>status or registry</u> does not accumulate ULP as of the date the application is properly filed. The accrual of ULP is tolled until the application is denied.
    - → The adjustment application can be under INA §§ 209, 245, or 245(i), Public Law 99-603 § 202, NACARA § 202(b), or HRIFA § 902.
    - → Except for a NACARA or HRIFA application, the application must be filed affirmatively to stop the accrual of ULP. However, ULP will continue to be tolled where an application initially denied by USCIS is renewed in removal proceedings.
  - b. <u>A nonimmigrant with a pending extension of status (EOS) or change of status (COS) request</u> does not accrue ULP for a period of up to 120 days for the purpose of the three year bar only according to the statute. But as a matter of USCIS policy, ULP is tolled for the entire period during which an EOS or COS is pending, and also covers the ten year bar and the permanent bar under INA § 212(a)(9)(C)(i)(i). The EOS/COS applicant must show that: (1) the application was timely; (2) she maintained her status prior to filing the request, and (3) she did not engage in unauthorized employment.
    - $\rightarrow$  If the EOS/COS request is approved, the individual is granted a new POSA, retroactive to the date the prior POSA expired.
    - $\rightarrow$  If the EOS/COS is denied because it was frivolous, or because the applicant worked without authorization, ULP will be deemed to begin after the expiration date marked on the I-94. If the individual was previously admitted

for duration of status, ULP will begin to accrue the day after the EOS/COS denial.

- → If the EOS/COS is denied because it was untimely, ULP will be deemed to begin on the date the I-94 expired. If the individual was admitted for duration of status, ULP will begin to accrue on the day after the EOS/COS denial.
- $\rightarrow$  If the EOS/COS request is denied for cause, ULP will begin to accrue on the day after the denial.
  - $\rightarrow$  If the individual then files a motion to reopen or reconsider, the mere filing of the motion will <u>not</u> stop the accrual of ULP. However, if the motion is successful and the benefit granted, the individual will be deemed to not have accrued ULP during the pendency of the motion. If the motion is successful but the benefit is still denied, ULP will only accrue from the date of the last denial, as long as the initial request was timely and non-frivolous.
  - → If the denial of the underlying petition, upon which an EOS/COS is based, is appealed to the Administrative Appeals Office, the mere filing of the appeal will not stop the accumulation of ULP. However, if the petition denial is reversed on appeal, and EOS/COS subsequently granted, no ULP will be deemed to have accrued between the denial of the petition and request for EOS/COS and the subsequent grant of the EOS/COS.
- → An individual who files an initial, timely and non-frivolous EOS/COS request will stop the accumulation of ULP but may still fall out of lawful <u>status</u> during the pendency of the request. Therefore, any subsequent, untimely EOS/COS request made after the expiration of her POSA will not stop the accrual of ULP if the first, timely EOS/COS is denied.
- c. <u>A nonimmigrant with a pending EOS/COS request who departs the U.S.</u> <u>while the request is pending</u> does not accrue ULP, so long as the request was timely and non-frivolous, and the individual did not work without authorization.
- d. <u>An individual with a pending Legalization, Special Agricultural Worker, or Life Legalization application</u> does not accrue ULP. Accrual stops on the day of filing and resumes the day after denial. If the denial is appealed, the POSA continues throughout the administrative appeal process, but <u>not</u> during removal proceedings or judicial review.
- e. <u>An individual granted Family Unity Program (FUP) benefits under the LIFE</u> <u>Act Amendments of 2002 § 1504</u> does not accrue ULP. Note that the <u>statutory</u> exception to ULP for FUP grantees only applies to those individuals covered under the Immigration Act of 1990 § 301. As a matter of policy, USCIS treats

section 1504 cases the same as section 301 cases for purposes of ULP. As with section 301 FUP cases, if the application is <u>approved</u>, no ULP will accrue from the date of filing throughout the FUP grant. If, on the other hand, because the mere filing of the application does not stop ULP, if the application is denied, ULP will continue to accrue as if no application had been filed. Finally, a grant of FUP benefits under section 1504 does not cure any previously accumulated ULP.

- f. <u>An individual who files an application for Temporary Protected Status (TPS)</u> will not accrue ULP while the application is pending provided it is ultimately approved, and the POSA will continue until TPS is terminated. If the application is denied, however, or if prima facie eligibility is not established, ULP will begin on the date the individual's previous POSA expired.
- **g.** <u>An individual granted voluntary departure (VD) under INA § 240B</u> will not accrue ULP. ULP stops accruing on the date an individual is granted VD and resumes on the day after VD expires if the individual has not departed the U.S.
  - $\rightarrow$  If an Immigration Judge denies VD and the decision is reversed on appeal by the BIA, the time from the denial to the reversal will be considered a POSA.
  - $\rightarrow$  If an Immigration Judge or the BIA reinstates voluntary departure in a removal proceeding that was reopened for a purpose other than solely making an application for VD, and if the reopening was granted prior to the expiration of a previous grant of VD, then the time from the initial VD expiration to the grant of reinstatement is <u>not</u> considered a POSA. However, the period of time encompasses by the new grant of VD is considered a POSA.
  - $\rightarrow$  An individual granted VD before January 20, 2009 who seeks a review of a final removal order in a Petition for Review, where the circuit court stays the running of the VD period while the case is pending, does not accrue ULP.
    - → On the other hand, for any EOIR VD grant after January 20, 2009, the mere filing of a Petition for Review will automatically terminate the VD and make the underlying alternate removal order effective. Therefore, that person will not be protected from accruing ULP during the pendency of the Petition for Review if she remains in the U.S. The accrual of ULP will begin on the day after the Petition for Review is filed. On the other hand, if the individual leaves within 30 days of filing the Petition for Review, she will not accumulate any ULP between the filing of the Petition and her departure.
  - → A person granted VD by the Immigration Judge or the BIA before January 20, 2009 who later requests withdrawal of that order in connection with a motion to reopen or reconsider will accrue ULP as of the date of the administratively

final order of removal, as if VD had never been granted, unless the individual is otherwise protected from the accrual of ULP.

- → Under the new VD regulations, effective January 20, 2009, the mere filing of a motion to reopen or reconsider during the VD period automatically terminates the VD order. Therefore, ULP would accrue on the day after the individual files a motion to reopen or reconsider.
- **h.** <u>An individual granted an administrative or judicial stay of removal</u>, either automatic or discretionary, does not accumulate ULP. The issuance of a stay, however, does not erase prior periods of ULP.

**Practice Pointer**: The memo appears to give erroneous advice regarding the issuance of an automatic stay of removal in connection with the filing of a motion to rescind an *in absentia* order of removal. The memo correctly notes that the filing of such a motion will stay an individual's removal until the motion is decided. *See* section (b)(3)(I). However, it then goes further, noting that "[t]he order <u>will be stayed</u> through a possible appeal to the Board of Immigration Appeals (BIA) or Federal Court." (emphasis added). Unfortunately, the regulations make clear that motions to rescind *in absentia* removal orders provide an automatic stay only through review by the Immigration Judge. 8 CFR § 1003.23(b)(4)(ii). Even motions to rescind *in absentia* administrative appeal—not judicial review. 8 CFR § 1003.23(b)(4)(iii)(C).

- i. <u>An individual granted deferred action</u> does not accumulate ULP. Accrual of ULP stops on the date an individual is granted deferred action and resumes the day after deferred action is terminated. The granting of deferred action does not cure any prior periods of ULP.
- **j.** <u>An individual granted withholding of removal (or deportation)</u> does not accrue ULP. The accrual stops on the date of the grant and continues through the period of the grant.
- k. <u>An individual granted withholding or deferral of removal under the</u> <u>Convention Against Torture</u> does not accrue ULP. The accrual stops on the date of the grant and continues through the period of the grant.
- <u>An individual granted deferred enforced departure (DED)</u> does not accrue ULP. The accrual stops on the date of the grant and continues through the period of the grant.

m. <u>An individual admitted under the Visa Waiver Program and granted</u> <u>satisfactory departure under 8 CFR § 217.3</u> does not accrue ULP. A person granted satisfactory departure by ICE who leaves during the requisite period is deemed to not have violated her VWP admission, and therefore ULP does not accrue during the satisfactory departure period. On the other hand, if the person granted satisfactory departure does not leave the U.S. on time, ULP will accrue the day after the expiration of the satisfactory departure period.

### C. Common situations that have no bearing on the accrual of ULP

- $\rightarrow$  The memo makes clear that certain steps in the removal process have no effect on the accrual of ULP. They include:
  - 1. <u>The initiation of removal proceedings</u> does not stop, or start, the accrual of ULP.
  - 2. <u>The filing of an appeal or Petition for Review</u> does not affect an individual's position in relation to the accrual of ULP.
  - 3. <u>The issuance of an Order of Supervision</u> does not stop, or start, the accrual of ULP.

### IV. Relief from ULP Inadmissibility

### A. Waiver of the three and ten year bars

- 1. <u>Nonimmigrants</u>. A nonimmigrant subject to the three or ten year ULP bar may seek a discretionary waiver under INA § 212(d)(3).
- Spouses, sons or daughters of USCs or LPRs, and Fiancé(e)s of USCs. An immigrant subject to the three or ten year bar may, in certain circumstances, apply for a waiver under INA § 212(a)(9)(B)(v).
- $\rightarrow$  The individual must first have a qualifying relative, which would include a spouse or parent who is a USC or LPR. The waiver applicant must then demonstrate that the denial of admission would result in extreme hardship to the qualifying relative(s).
- $\rightarrow$  Note that a USC or LPR child is not a qualifying relative under the statute.
- $\rightarrow$  For waiver applicants seeking admission on a K-1 or K-2, the extreme hardship showing would be in relation to the K-1 nonimmigrant's USC fiancé(e).
- **3.** <u>Asylees and refugees seeking adjustment of status</u>. An asylee or refugee subject to the three- or ten-year bar can seek a waiver under INA § 209(c). The waiver is submitted on Form I-602, although USCIS retains the discretion to grant the waiver without the application.
- 4. <u>TPS applicants</u>. A TPS applicant subject to the three- or ten-year bar may be granted a waiver for humanitarian purposes, to assure family unity, or in the public interest.

- → Note that a waiver granted under the TPS provisions will not waive the same grounds of inadmissibility in the immigrant context. This is because the standard for the TPS waiver differs from than the "extreme hardship to a qualifying relative" standard used in waiving inadmissibility for applicants seeking admission as immigrants.
- 5. Legalization under INA § 245A, legalization applicants under 8 CFR §§ 245a.2(k) and 245a.18, and any legalization-related class settlement agreements. Like the TPS waiver, this waiver can be granted for humanitarian purposes, to ensure family unity, or when it would be in the public interest.

### B. <u>Waiver of the permanent bar under INA § 212(a)(9)(C)(i)(I)</u>

- $\rightarrow$  While there is generally no waiver of inadmissibility under INA § 212(a)(9)(C)(i)(I), certain small categories of individuals may be admitted in spite of the bar.
  - <u>HRIFA and NACARA applicants.</u> USCIS retains jurisdiction to consider a waiver application from a HRIFA or NACARA applicant. The waiver is submitted on Form I-601, although the standard for adjudicating the waiver is the same as if the person filed Form I-212.
  - 2. <u>Legalizations, SAW, LIFE Act Legalization, and Legalization class settlement</u> <u>agreement applicants.</u> These individuals may be granted a waiver based on humanitarian reasons, to ensure family unity, or because it would be in the public interest. The waiver is submitted on Form I-690.
  - **3.** <u>**TPS applicants**</u> The permanent bar for a TPS applicant may be waived for humanitarian reasons, to ensure family unity, or because it would be in the public interest.
  - → Note that a waiver of the permanent bar granted under the TPS provisions will <u>not</u> waive the same grounds of inadmissibility in connection with a subsequent application for adjustment of status, because a normal adjustment applicant does not have an available waiver of the permanent bar. A person previously granted TPS with a waiver of the permanent bar would still have to wait ten years from the date of her last departure.
  - 4. <u>Certain battered spouses, parents, and children</u> An approved VAWA selfpetitioner and her children can be granted a waiver under INA § 212(a)(9)(C)(i) if there is a connection between the abuse, the ULP and departure (or removal), and the subsequent entry, or attempted entry, without inspection.
  - 5. <u>Asylee and refugee adjustment applicants</u> The ten year absence normally imposed on applicants for consent to reapply <u>does not</u> apply to asylee and refugee adjustment applicants. Therefore, such individuals may obtain a waiver of inadmissibility in lieu

of consent to reapply. The waiver is filed on Form I-602, although USCIS retains the discretion to grant the waiver without the application.

6. <u>Nonimmigrants</u> A nonimmigrant subject to INA § 212(a)(9)(C)(i)(I) may be admitted as a matter of discretion pursuant to INA § 212(d)(3). However, obtaining a waiver under this section would not relieve the same individual of the need to obtain consent to reapply if she later sought permanent residence.

### **OFFICE OF BUSINESS LIAISON**

### U.S. DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Employer Information Bulletin 102	EBISS: (800) 357-2099
The Form I-9 Process In A Nutshell	NCSC: (800) 375-5283 TDD: (800) 767-1833
The Form 1-9 Trocess in A Nutshen	Fax: (202) 272-1865
October 7, 2005	Order Forms: (800) 870-3676
	Website: <u>www.uscis.gov</u>

The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

### THE FORM I-9 PROCESS IN A NUTSHELL

### Purpose

- This bulletin supplements the 1991 version of the "Handbook for Employers" (Form M-274) and the 1991 (rebranded in 2005) version of the Form I-9 and its instructions, which may both be downloaded from the U.S. Citizenship and Immigration Services web site.
- This bulletin provides employers with basic guidance for compliance with requirements to complete, update, and retain Form I-9 for all employees, whether U.S. citizens or non-U.S. citizens.
- **NOTE:** The "receipt rule" described in this bulletin is the most up-to-date receipt rule. The receipt rule stated in the Form I-9 instructions and the "Handbook for Employers" (Form M-274) is **NOT** the current rule. See Receipt Rule below.

### Introduction to Worksite Enforcement and Employment Eligibility Verification

The 1986 Immigration Reform and Control Act ("IRCA") sought to control illegal migration by eliminating employment opportunity as a key incentive for unauthorized persons to come to the U.S. IRCA's core prohibition is against the hiring or continued employment of aliens whom employers know are unauthorized to work in the United States. IRCA makes all U.S. employers responsible for verifying, through a specific process, the identity and work authorization or eligibility of all individuals, whether U.S. citizens or not, hired after November 6, 1986. To implement this, employers are required to complete Employment Eligibility Verification Forms I-9 for all employees. An employer's obligation to review documents is not triggered until a person has been **hired**, whereupon the new employee is entitled to submit a document or combination of documents of his choice (**from List A or a combination of documents from List B and List C stated on the reverse side of the Form I-9**) to verify his identity and work eligibility.

**Hired** = Employee's actual commencement of employment for wages or other remuneration. The employee must complete Section 1 of the Form I-9 by the date of hire (i.e. no later than the date on which employment services start). (See Completing the Form I-9 below.)

### **Protection from Discrimination**<sup>1</sup>

IRCA also prohibits employers with 4 or more employees from discriminating against any person (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of a person's national origin or, in the case of a citizen or protected individual, citizenship status. Employers with 15 or more employees may not discriminate against any person on the basis of national origin in hiring, discharging, recruitment, assignment, compensation, or other terms and conditions of employment. The Form I-9 process may not be used to **pre-screen** employees for hiring. Furthermore, an employer may not demand more or different documents than an employee chooses to present, provided that the documents presented are acceptable under the Form I-9 requirements. An employer may not demand documents issued by the Department of Homeland Security (**formerly the Immigration and Naturalization Service**) in lieu of other acceptable document(s) from List(s) A or B and C and may not consider the fact that work authorization documents have future expiration dates as cause for not hiring or for terminating employment.

<sup>&</sup>lt;sup>1</sup> The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") investigates charges of job discrimination related to an individual's immigration status or national origin. It also investigates charges of document abuse discrimination--when employers request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others. All individuals authorized to work are protected from document abuse. OSC can be accessed via the Internet at http://www.usdoj.gov/crt/osc/htm/aboutosc.htm.

### Changes effective after 11/91 Publication of Form I-9 and "Handbook for Employers"<sup>2</sup>

FORM I-151: Form I-151 has been withdrawn from circulation and is no longer a valid List A document.<sup>3</sup>

**FORM I-766:** Form I-766 was introduced in January 1997 as an Employment Authorization Document (EAD). It should be recorded on the Form I-9 under List A. A previous version of the EAD is the Form I-688B, which continues to be an acceptable List A document. (See Employer Information Bulletin 104.)

**FORM I-551:** The **Permanent Resident Card** (new version of Form I-551) was introduced in 1990 as documentation issued for lawful permanent residents of the U.S. Older versions of Form I-551 remain valid until expiration, if any. The Form I-551 should be recorded on the Form I-9 under List A. On the back of the Form I-9, it is listed under List A #5 as an Alien Registration Receipt Card. (See Employer Information Bulletin 104.)

**DOCUMENTS REMOVED FROM FORM I-9 LIST:** *Effective September 30, 1997* via interim rule published at 62 Fed. Reg. 51001-51006, the following documents were removed from the list of acceptable identity and work authorization documents to comply with the *Illegal Immigration Reform and Alien Responsibility Act of 1996 (IIRIRA)*: Certificate of U.S. Citizenship (List A #2), Certificate of Naturalization (List A #3), Unexpired Reentry Permit (List A #8), and Unexpired Refugee Travel Document (List A #9). In addition, the acceptability of an unexpired foreign passport with a Form I-94 indicating unexpired work authorization (List A #4) was modified. Such a combination of documents is only acceptable when the individual is authorized to work for a specific employer incident to his or her status.

**RECEIPT RULE:** Originally effective September 30, 1997, amended by interim rule on *February 9, 1999*; the rule explaining when receipts may be used in lieu of original documents in the Form I-9 process (*receipt rule*<sup>4</sup>) now provides that:

- If an individual's document has been **lost**, **stolen**, or **damaged**, then he/she can present a receipt for the application for a replacement document. The replacement document needs to be presented to the employer within 90 days of the date of hire or, in the case of reverification, the date employment authorization expires.
- If the individual presents as a receipt, the arrival portion of the Form I-94 containing both an unexpired temporary I-551 stamp (indicating temporary evidence of permanent resident status) and a photograph of the individual, such document satisfies the Form I-9 documentation presentation requirement until the expiration date on the Form I-94. If no expiration date is indicated, an employer may accept the receipt for one year from the date the Form I-94 was issued.
- Form I-94 with a refugee admission stamp is acceptable as a receipt for 90 days, within which time the employee must present an unrestricted Social Security card together with an identity document from List B, or an Employment Authorization Document (Form I-688B or Form I-766). To indicate refugee status, the stamp may include a reference to Section 207 of the Immigration and Nationality Act (INA) rather than state the word "refugee."

### THE FORM I-9 PROCESS

### General

Employers are responsible for the completion and retention of Forms I-9 for all employees, regardless of citizenship or national origin, hired for employment in the United States. An employee is any individual compensated for services or labor by an employer, whether by payment in the form of wages or other remuneration (such as goods, services, food, or lodging).

### For whom is a Form I-9 unnecessary?

- Employees hired on or before November 6, 1986, and continuously employed by the same employer;
- Individuals performing casual employment who provide domestic service in a private home that is sporadic, irregular or intermittent;
- Independent contractors (see Employer Information Bulletin 110); and
- Workers provided to employers by individuals or entities providing contract services, such as temporary agencies (in such cases, the contracting party is the employer for Form I-9 purposes).

### Note:

- An employer is not permitted under the law to contract for the labor of an individual whom he knows is not authorized for employment. Employers who violate this prohibition may be subject to civil and criminal penalties.
- Employers are not permitted to request more or different documents than are required or to refuse to honor documents tendered that reasonably appear to be genuine and to relate to the individual presenting the document.

<sup>&</sup>lt;sup>2</sup> These changes are not reflected on the current version of the Form I-9, its instructions, or the "Handbook for Employers."

<sup>&</sup>lt;sup>3</sup> To replace their "green cards," holders of Form I-151 Alien Registration Receipt Card must submit to USCIS a completed Form I-90 along with the current filing fee. (To download Form I-90 and for filing instructions go to <u>www.uscis.gov</u>.)

<sup>&</sup>lt;sup>4</sup> For more information on the receipt rule see Employer Information Bulletin 107; see more on Receipt Rule below.

### **Retention of Forms I-9**

An employer must retain the Form I-9 for each employee **either** for three (3) years after the date of hire **or** for one (1) year after employment is terminated, **whichever is later**. All current employees, therefore, must have Forms I-9 on file with the employer. Upon request, all Forms I-9 subject to the retention requirement must be made available to an authorized official of the Department of Homeland Security, Department of Labor, and/or the Office of Special Counsel for Unfair Immigration-Related Employment Practices for the Department of Justice.

### **Examples for terminated employees:**

Step one: Identify the date of hire and add 3 years = [date A] 1. 11/01/93 + 3 years = 11/01/96 or 03/27/99 + 3 years = 03/27/02

Step two: Identify the termination date and add 1 year = [date B] 1. 07/05/94 + 1 year = 07/05/95 or 05/19/03 + 1 year = 05/19/04

### Step three: Compare dates [A] and [B]

1. Compare 11/01/96 and 07/05/95

2. Compare 03/27/02 and 05/19/04

Step four: Determine the later of dates [A] or [B] in each case. The later of the two becomes the retention date for the corresponding Form I-9.

#### Example results:

1. 11/01/96 is later than 07/05/95, therefore 11/01/96 is the retention date for this terminated employee's Form I-9.
 2. 05/19/04 is later than 03/27/02, therefore 05/19/04 is the retention date for this terminated employee's Form I-9.

### **Missing Forms I-9**

An employer who discovers that the Form I-9 is not on file for a given employee should request that the employee complete section 1 of the Form I-9 immediately and submit documentation as required in Section 2. The new form should be dated when completed-**never** post-dated<sup>5</sup>. When an employee does not provide acceptable documentation, the employer must terminate employment or risk being subject to penalties for "knowingly" continuing to employ an unauthorized worker if the individual is not in fact authorized to work.

### **Discovering an Unauthorized Employee**

An employer who discovers that an employee has been working without authorization should reverify work authorization by allowing such an employee another opportunity to present acceptable documentation and complete a new Form I-9. However, employers should be aware that, if they know or should have known that an employee is unauthorized to work in the United States, they may be subject to serious penalties for "knowingly continuing to employ" an unauthorized worker.

### Successive Employers and Reorganizations

Employers that acquire a business as a result of a corporate reorganization, merger, or sale of stock or assets, and retain the predecessor's employees are not required to complete new Forms I-9 for those employees and instead may choose to rely on the Forms I-9 completed by the predecessor employer if the employees are continuing in employment, and they have a reasonable expectation of employment at all times. However, the successor employer will be held responsible if the predecessor's Forms I-9 are deficient or defective.

<sup>&</sup>lt;sup>5</sup> Employers may provide an explanatory annotation as to why the Form I-9 was not completed on a timely basis.

### **COMPLETING THE FORM I-9**

The Form I-9 contains three sections. The employee must complete Section 1. The employer must complete sections 2 and 3. The employer is required to ensure that **all** sections of the Form I-9 are timely and properly completed. **The Form I-9 is available in ENGLISH ONLY.** 

### **SECTION 1: EMPLOYEE INFORMATION AND VERIFICATION Responsibility of the Employer**

Employers must ensure that Section 1 is completed by the employee upon **date of hire** (i.e. 1<sup>st</sup> day of paid work). The signature and attestation under penalty of perjury portions of Section 1 are very important, and employers should take special care to ensure that employees complete these in full. Although employers are held responsible for deficiencies of information in Section 1 (i.e. where required information is not provided by the employee), they may not require employees to produce documents to verify Section 1 information.

**NOTE:** An employee's signature and attestation of status under penalty of perjury are particularly important. If a given employee refuses to provide his/her signature or attestation, there is no reason for the employer to proceed to complete Section 2, and the employer should not continue to employ the individual.

**NOTE:** An employee is not required to include his or her social security number in Section 1 of the Form I-9, nor can the employee be required to do so by the employer. This information block is optional. However, there is one exception: when the employee is hired by an employer participating in the voluntary automated employment eligibility confirmation pilot program. Therefore, an employer cannot require an employee to include his or her social security number <u>unless</u> the employer is participating in the voluntary automated employment eligibility confirmation pilot program.

The failure of an employee to include a social security number in section 1 of the Form I-9 does not subject an employer to civil money penalties. Such an omission is neither a substantive, technical, or procedural failure to comply with the Form I-9 requirements.<sup>7</sup>

### **Responsibility of the Employee**

Employees need to provide the information requested in Section 1. In particular, they must attest to their status by checking the applicable box indicating that they are:

- Citizen/national of the United States (top box),
- Lawful permanent resident with a "green card" (*middle box*), or
- Alien authorized to work in the United States until a specified date (*bottom box*).

Employees **must sign and date** this Section of the Form I-9 when completed.

**Note:** Employers should remind employees of format conventions such as providing dates in the format of month/day/year, because dating formats in the employees' countries of origin may have a different order.

Note: Certain aliens, such as asylees and refugees, are authorized to work indefinitely incident to their status and may not have an expiration date to fill-in for the bottom box of the attestation block in Section 1. A notation should be included that work authorization is indefinite.

### **Responsibility of Translator or Preparer**

If translators or preparers are used by the employee to fill out Section 1, -such individuals must also sign, date, and provide requested information in the Preparer/Translator Certification Block at the bottom of Section 1. Employers themselves must fill in and sign this block if they have assisted employees with Section 1.

<sup>&</sup>lt;sup>6</sup> While the Department of Homeland Security has the authority pursuant to section 264(f) of the Immigration and Nationality Act, 8 USC 1304(f), to require aliens to provide their social security account number on any alien record that it maintains, its authority does not extend to the Form I-9, except for individuals hired by employers participating in the voluntary automated employment eligibility confirmation pilot programs. See IIRIRA 403(a)(1)(A).

<sup>&</sup>lt;sup>7</sup> See 63 Fed. Reg. 16909 (April 7, 1998) (implementing the good faith provision of section 411 of IIRIRA).

### **SECTION 2: EMPLOYER REVIEW AND VERIFICATION**

- The second part of the form requires the employer to list the documents that were produced by the worker to verify his or her identity and employment eligibility. There are three groups of documents that a worker may use for this purpose. The documents that can be presented by employees are listed on the reverse side of the Form I-9. A worker may choose to provide a document from List A (which establishes both identity and work authorization), or he/she may choose to provide one document from List B (which establishes identity) and one document from List C (which establishes work eligibility). Documentation must be rejected if it is expired, with two exceptions: the U.S. passport (a document from List A) and any document from List B. Employers who fail to complete the Form I-9 or who hire or continue to employ workers they know are unauthorized to work in the United States may be subject to civil and, in certain cases, criminal penalties. See Employer Information Bulletin 111.
- Employers cannot refuse to hire an individual because that individual's document has an expiration date.

**Original Documents Only** - The employer or employer's representative/agent<sup>8</sup> must *personally*<sup>9</sup> review *original* document(s) that demonstrate an employee's identity and eligibility to work in the U.S.<sup>10</sup> Photocopies, or numbers representing original documents, are not acceptable. Exception: List C #3, a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the U.S. bearing an official seal is acceptable. All identifying information, including the document title, the issuing authority, the document number, and/or the expiration date (if applicable) must be provided in full.

**<u>RECEIPT RULE</u>**: Employees who do not possess the required documentation when employment begins **may not submit receipts showing that they have applied for initial applications for documents or for applications for extension of documents**. An employer may only accept receipts for:

- A **replacement document** in lieu of the required document if a document was *lost, stolen, or damaged*. The replacement document must be presented within 90 days of the date of hire or, in the case of reverification; the date employment authorization expires.
- The arrival portion of the Form I-94 containing both an unexpired temporary I-551 ADIT stamp (indicating temporary evidence of permanent resident status) and a photograph of the individual. This type of receipt is valid until the expiration date stated on the document. If no expiration date is indicated, an employer may accept the document as a receipt for one year from the date the Form I-94 was issued. The "green card" (i.e., Form I-551) itself should be presented by the end of the receipt validity period.
- A Form I-94 containing a refugee admission stamp. The employer can accept this as a receipt as long as the employee presents: 1) the departure portion of Form I-94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, Form I-688B, or a social security card that contains no employment restrictions; and 2) within 90-days of the date of hire, or in the case of reverification, the date employment authorization expires, presents an unexpired Form I-766 or From I-688B, or a social security card that contains no employment restrictions together with a document described in List B. This type of receipt is sufficient to evidence both identity and employment authorization for the 90-day receipt validity period.

**<u>Common example</u>**: An EAD (Form I-688B or Form I-766) is generally valid as evidence of work authorization for one year. The EAD may be renewed by the submission of a new application to the U.S. Citizenship and Immigration Services. Accordingly, a receipt acknowledging such an application is unacceptable.

Note: A receipt is never acceptable for employment lasting for less than 3 working days.

### Source of Confusion:

- (1) Social Security Cards. Please see Employer Information Bulletin 112.
- (2) Multiple entries for document numbers and expiration dates must be filled out only where an employee has presented more than one document under one List (e.g., an unexpired passport with an unexpired Form I-94; unexpired passport with an unexpired Form I-94 and Form I-20 endorsed by the Designated School Official). All document numbers and expiration dates must be recorded.
- (3) List A or List B documents from which the bearer cannot be identified are never acceptable even if unexpired.
- (4) Unexpired foreign passport containing an unexpired I-551 ADIT stamp. This constitutes temporary evidence of permanent resident status and must be reverified at the time the stamp expires; it does not constitute a receipt. The actual Form I-551, or "green card," should not be reverified even if it contains an expiration date.

<sup>&</sup>lt;sup>8</sup> Employers may not use agents to shield themselves from responsibility.

<sup>&</sup>lt;sup>9</sup> Employers with remote hires may designate agents such as notaries public, attorneys, or other trusted individuals to exercise the Section 2 review of documents on their behalf. An employer is bound by the actions of such agent. It is key that whoever fills out section 2 of the Form I-9 must personally review the employee's document(s).

<sup>&</sup>lt;sup>10</sup> **Anti-Discrimination Warning:** Employers are not permitted to require a particular document(s) or combination of documents. The employer must accept any document from List A or combination of documents from Lists B and C, at the employee's discretion, that reasonably appears to be genuine and to relate to the employee. Likewise, employers may <u>neither require nor accept</u> any more documentation than the minimum necessary to substantiate identity and work eligibility.

### Standards of Review<sup>11</sup>

The employer must review and accept documents that reasonably appear to be genuine and to relate to the person presenting them (e.g., the name on the Social Security card should be compared to the name on the state driver's permit and the photo on the driver's permit compared to the appearance of the person who presented the documents). Employers may reject documents on these grounds and ask employees who present questionable documentation for other documentation that satisfies the Form I-9 requirements. Employees who are unable to present acceptable documents should be terminated. Employers who choose to retain such employees may be subject to penalties for improper completion of the form or for "knowingly continuing to employ" unauthorized workers if such workers are in fact unauthorized.

**Note:** Employers should be alert for signs of fraud, such as a social security card that contains more than nine digits or that begins with "000."

### **Signature and Date: Employers**

Employers are required to sign and date the bottom of Section 2 and provide all requested information in the **CERTIFICATION** portion.

**Note:** The <u>personal</u> attestation and signature of the employer are extremely important. The person who actually reviews original documents -- whether that person is the employer, or an agent of the employer, such as a provider of contract services to the employer-- must sign and date the Form I-9.

### SECTION 3: UPDATING AND REVERIFICATION<sup>12</sup>

**<u>Reverification requirement</u>**: Employers are required to reverify employment eligibility when an employee's employment authorization indicated in Section 1 or evidence of employment authorization recorded in Section 2 has expired. An employer may also reverify employment authorization, in lieu of completing a new Form I-9, when an employee is rehired within three years of the date that the Form I-9 was originally completed and the employee's work authorization or evidence of work authorization has expired. The reverification requirement does not apply to the U.S. passport or "green card" (Form I-551). Note that temporary evidence of permanent resident status in the form of an unexpired foreign passport containing a temporary I-551 ADIT stamp is subject to the reverification requirement.

**IMPORTANT:** Most employers find it useful to institute a system that reminds them automatically, in advance, that a given employee's authorization document will expire. Advance warning assists both employees and employers, since early notice will usually allow employees time to renew the authorization prior to the expiration date and avoid penalties for employers. Enough advance warning is important so that the employee can apply for and receive replacement documents in time to maintain uninterrupted employment. Note that U.S. Citizenship and Immigration Services' processing of applications for work authorization or evidence of work authorization can take up to 90 days.

### **Reverification Process**

Employers must reverify employment authorization on Section 3 of the Form I-9, or complete a new Form I-9 to be attached to the original Form I-9, no later than the date that employment authorization or employment authorization documentation expires. To reverify expired status (Section 1) and/or expired work authorization document(s) (Section 2), an employee may present any currently valid document from List A or List C. **Remember:** Receipts showing that the employee has applied for an extension of an expired employment authorization document are not acceptable. (See Receipt Rule.)

**Note:** Employees are not required to present, for reverification purposes, a new version of the same document that was presented to satisfy Section 2 but subsequently expired. Any document or combination of documents that would be acceptable to demonstrate work eligibility/authorization under Section 2 may be presented for reverification purposes. It is the employee's choice as to which document to present.

<sup>&</sup>lt;sup>11</sup> See Employer Information Bulletin 103.

<sup>&</sup>lt;sup>12</sup> See Employer Information Bulletin 107.

### Where Reverification is not Required

Permanent Resident Cards (also known as Alien Registration Receipt cards, Forms I-551, Resident Alien Cards, Permanent Resident Cards, or "Green Cards") are issued to lawful permanent residents<sup>13</sup> and conditional residents and should not be reverified when the cards expire. Temporary evidence of permanent resident status in the form of a temporary I-551 ADIT stamp in an unexpired foreign passport is subject to reverification. This is because of the temporary nature of this document. Likewise, documents from List B need not be reverified when they expire. In fact, documents from List B are acceptable even if they have already expired at the time that they are initially shown.

### Rehires

Employers may reverify information for an employee rehired within 3 years of the date of the initial execution of the Form I-9 as an alternative to completing a new Form I-9. If the rehired employee's basis for employment eligibility, as listed on the retained Form I-9, remains the same, the employer must update the previously completed Form I-9. If the basis for work eligibility has expired, the employer must reverify. To update or reverify on the previously completed Form I-9, employers must complete Section 3 items A (name), B (date of rehire), and C (new documentation) in full, as applicable. In this section, as in Section 2, it is important that the person who actually examines the documents on behalf of the employer personally sign and date the attestation provision at the bottom of the form.

**To update:** Employers should record the date of rehire, sign and date Section 3 of the previously completed Form I-9 or complete a new Form I-9.

**To reverify:** Employers should record the date of rehire, record the document title, number, and expiration date (if any) of documentation presented to reverify expired work authorization or work authorization documentation, sign, and date Section 3 of the previously completed Form I-9. A new Form I-9 may be chosen to be completed instead.

**Note:** Documentation for reverification purposes may be the renewed version of the originally presented document or any other acceptable document from List A or List C that demonstrates current work eligibility/authorization. List B documents do not need to be updated or reverified, even if expired.

### **Other Issues**

### **Copying of Documentation**

• An employer may, but is not required to, copy a document (front and back) presented by an individual solely for the purpose of complying with the Form I-9 verification requirements. If such a copy is made, it must be retained with the Form I-9. The copying of any such document and the retention of the copy does not relieve the employer from the requirement to fully complete Section 2 of the Form I-9. If employers choose to keep copies of Form I-9 documentation, then the same should be done for all employees, and the copies should be attached to the related Form I-9. Employers should not copy the documents only of individuals of certain national origin or citizenship status. To do so may constitute unlawful discrimination under section 274B of the Immigration and Nationality Act.

### **Interim Employment Authorization**

• Also note, except in the case of an initial application for employment authorization in the case of an applicant for asylum and certain applicants for adjustment of status, U.S. Citizenship and Immigration Services is required to adjudicate applications for employment authorization on Form I-765 within 90 days from the date of its receipt of the application. Failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days. Such authorization shall be subject to any conditions noted on the employment authorization document. However, if the application is denied prior to the expiration date of the interim employment authorization, the interim employment authorization document granted under this section shall automatically terminate as of the date of the adjudication and denial. See 8 C.F.R. 274a.13(d) at www.uscis.gov. In order to receive this interim employment authorization document, the individual needs to go to a local U.S. Citizenship and Immigration Services office. If the local office refuses to issue an interim employment authorization document, please contact the Office of Business Liaison.

### How to Document Extensions of Stay for Certain Nonimmigrants Continuing Employment with the Same Employer

• The following visa classifications for nonimmigrants with pending applications to extend their stay are automatically authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay: A-3, E-1, E-2, G-5, H-1, H-2A, H-2B, H-3, I, J-1, L-1, O-1, O-2s P-1, P-2, P-3, aliens having a religious occupation pursuant to 8 C.F.R. 214.2(r), and TN. To document this extension of employment authorization on the Form I-9, any expiration date noted in Sections 1 and 2 should be updated to clearly reflect this extension. The update should be initialed and dated.

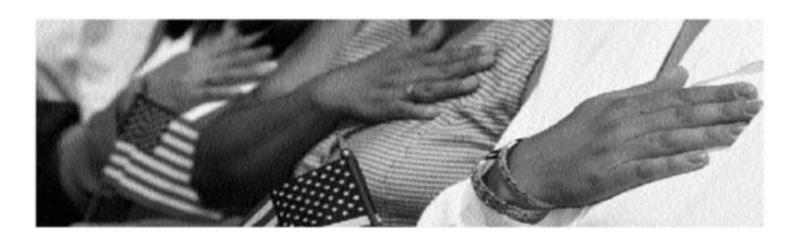
<sup>&</sup>lt;sup>13</sup> Expired cards must be renewed so that cardholders will have valid evidence of their status and registration for new employment, for travel outside of the U.S., and to obtain certain other benefits.

# Who Is Eligible for Naturalization?

Naturalization is how immigrants become citizens of the United States. If you wish to apply for naturalization, you should use the "Application for Naturalization" (Form N-400).

If you want to apply for citizenship for a child who is under 18 years old, you should use the "Application for Certificate of Citizenship" (Form N-600) or "Application for Citizenship and Issuance of a Certificate under Section 322" (Form N-600K). For more information about applying for citizenship for your children, see Questions 25-26 on pages 13-15. In the next few pages, we describe the naturalization eligibility requirements for persons who will use Form N-400.

The following table summarizes the naturalization requirements for *most* types of applicants. After the table is a section that provides more information on each requirement. If you still have questions about your eligibility, you should consult an immigrant assistance organization or USCIS.



REQUIREMENTS	<b>PR</b> Time as Permanent Resident	Continuous Residence	
If you are at least 18 years old and: Have been a Permanent Resident for the past 5 years and have no special circumstances. NOTE: Over 90% of applicants fall into this category.	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.	
If you are at least 18 years old and: Are currently married to and living with a U.S. citizen; and Have been married to and living with that same U.S. citizen for the past 3 years; and Your spouse has been a U.S. citizen for the past 3 years.	3 years	3 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.	
If you: Are in the U.S. Armed Forces (or will be filing your application within 6 months of an honorable discharge); and Have served for at least 1 year.	You must be a Permanent Resident on the day of your interview.	Not Required	
<ul> <li>If you are at least 18 years old and:</li> <li>Were in the U.S. Armed Forces for less than 1 year or</li> <li>If you are at least 18 years old and:</li> <li>Were in the U.S. Armed Forces for 1 year or more, but you were discharged more than 6 months ago</li> </ul>	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer. <b>NOTE:</b> If you were out of the country as part of your service, this time out of the country does not break your continuous residence. It is treated just like time spent in the United States. See "Naturalization Information for Military Personnel" (Form M-599) for more information.	
<ul> <li>If you:</li> <li>Performed active duty military service during:</li> <li>World War I (April 6, 1917-November 11, 1918);</li> <li>World War II (September 1, 1939-December 31, 1946);</li> <li>Korea (June 25, 1950-July 1, 1955);</li> <li>Vietnam (February 28, 1961-October 15, 1978);</li> <li>Persian Gulf (August 2, 1990-April 11, 1991); or</li> <li>On or after September 11, 2001.</li> </ul>	You are not required to be a Permanent Resident. <b>NOTE:</b> If you did not enlist or reenlist in the United States or its outlying possessions, you must be a Permanent Resident on the day you file your application.	Not Required	
If you are at least 18 years old and: Were married to a U.S. citizen who died during a period of honorable active duty service in the U.S. Armed Forces.	You must be a Permanent Resident on the day of your interview.	Not Required	
<ul> <li>NOTE: You must have been married to and living with your U.S. citizen spouse at the time of his/her death.</li> <li>If you are at least 18 years old and:</li> <li>Are a U.S. national (a non-citizen who owes permanent allegiance to the United States); and</li> <li>Have become a resident of any State; and</li> <li>Are otherwise qualified for naturalization.</li> </ul>	You are not required to be a Permanent Resident. Page 22	The same requirements as any other applicant for naturalization, depending on your qualifications. <b>NOTE:</b> Any time you resided in American Samoa or Swains Island counts the same as the time you resided within a State of the United States.	
Where to go for more information.	1 age 22	Pages 22-23	

# TYPE OF APPLICANT

$\leftrightarrow$		$\star$	$(\Delta)$	Attachment
Physical Presence in the United States	Time in USCIS District or State	Good Moral Character	English & Civics Knowledge	to the Constitution
30 months	3 months	Required	Required	Required
18 months	3 months	Required	Required	Required
Not Required	Not Required	Required	Required	Required
30 months <b>NOTE:</b> Time in the U.S. Armed Forces counts as time physically present in the United States no matter where you were. See "Naturalization Information for Military Personnel" (Form M-599) for more information.	3 months	Required	Required	Required
Not Required	Not Required	Required	Required	Required
Not Required	Not Required	Required	Required	Required
The same requirements as any other applicant for naturalization, depending on your qualifications. <b>NOTE:</b> Any time you resided in American Samoa or Swains Island counts the same as the time you resided within a State of the United States.	3 months or not required, depending on your qualifications.	Required	Required	Required
Pages 23-24	Page 24	Page 25	Pages 26-27	Pages 28-29

PR
Time as a
Permanent



REQUIREMENTS	Permanent Resident	Continuous Residence
If you are at least 18 years old and:	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.
Served on a vessel operated by the United States or If you: Served on a vessel registered in the United States and owned by U.S. citizens or a U.S. corporation.		<b>NOTE:</b> If you were out of the country while serving on a vessel, this time out of the country does not break your continuous residence. It is treated just like time spent in the United States.
If you are at least 18 years old and:	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.
Are an employee or an individual under contract to the U.S. Government.		<b>NOTE</b> : An absence from the United States for 1 year or more will break your continuous residence. You may keep your continuous residence if you have had at least 1 year of unbroken continuous residence since becoming a Permanent Resident and you get an approved Form N-470 before you have been out of the United States for 1 year.
If you are at least 18 years old and:	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.
Are a person who performs ministerial or priestly functions for a religious denomination or an interdenominational organization with a valid presence in the United States.		<b>NOTE:</b> An absence from the United States for 1 year or more will break your continuous residence. You may keep your continuous residence if you have had at least 1 year of unbroken continuous residence since becoming a Permanent Resident and you get an approved Form N-470 at any time before applying for naturalization.
If you are at least 18 years old and: Are employed by one of the following:	5 years	5 years as a Permanent Resident without leaving the United States for trips of 6 months or longer.
<ul> <li>If you are at least 18 years old and: Are employed by one of the following:</li> <li>An American institution of research recognized by the Attorney General;</li> <li>An American-owned firm or corporation engaged in the development of foreign trade and commerce for the United States; or</li> <li>A public international organization of which the United States is a member by law or treaty (if the employment began after you became a Permanent Resident).</li> <li>If you are at least 18 years old and:</li> </ul>		<b>NOTE</b> : An absence from the United States for 1 year or more will break your continuous residence. You may keep your continuous residence if you have had at least 1 year of unbroken continuous residence since becoming a Permanent Resident and you get an approved Form N-470 before you have been out of the United States for 1 year.
If you are at least 18 years old and: Have been employed for 5 years or more by a U.S. nonprofit organization that principally promotes the interests of the United States abroad through the communications media.	5 years	Not Required
<ul> <li>If you are at least 18 years old and:</li> <li>Are the spouse of a U.S. citizen who is one of the following:</li> <li>A member of the U.S. Armed Forces;</li> <li>An employee or an individual under contract to the U.S. Government;</li> <li>An employee of an American institution of research recognized by the Attorney General;</li> <li>An employee of an American-owned firm or corporation engaged in the development of foreign trade and commerce for the United States;</li> <li>An employee of a public international organization of which the United States is a member by law or treaty; or</li> <li>A person who performs ministerial or priestly functions for a religious denomination or an interdenominational organization with a valid presence in the United States</li> <li>and You will be proceeding to join your spouse whose work abroad under orders of the qualifying employer will continue for at least 1 year after the date you will be naturalized. Form N-400 should be filed prior to departing</li> </ul>		Not Required
Where to go for more information	Page 22	Pages 22-23

Where to go for more information.

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Physical Presence in the United States	Time in USCIS District or State	Good Moral Character	English & Civics Knowledge	Attachment to the Constitution
30 months <b>NOTE:</b> Time served on the vessel counts as time "physically present" in the United States no matter where you were.	3 months	Required	Required	Required
30 months <b>NOTE:</b> Time spent in this type of employment counts as time physically present in the United States no matter where you are as long as you get an approved Form N-470 before you have been out of the United States for 1 year.	3 months	Required	Required	Required
30 months <b>NOTE:</b> Time spent in this type of employment counts as time physically present in the United States no matter where you are as long as you get an approved Form N-470 before you apply for naturalization.	3 months	Required	Required	Required
30 months	3 months	Required	Required	Required
Not Required	Not Required	Required	Required	Required
Not Required	Not Required	Required	Required	Required
Pages 23-24	Page 24	Page 25	Pages 26-27	Pages 28-29



### Time as a Permanent Resident

Permanent Residents are people who have "permanent resident" status in the United States as provided for under U.S. immigration laws. Permanent Residents are normally given Permanent Resident Cards, also known as "Green Cards." (**NOTE:** These cards used to be called Alien Registration Cards.)

In most cases, you must be a Permanent Resident for a certain number of years before you may apply for naturalization. But, it is not enough to be a Permanent Resident for the required number of years; you must also be in "continuous residence" during that time.



### **Continuous Residence**

"Continuous residence" means that you have not left the United States for a long period of time. If you leave the United States for too long, you may interrupt your continuous residence.

What if I was outside the United States between 6 and 12 months? If you leave the United States for more than 6 months, but less than 1 year, you have broken or disrupted your continuous residence unless you can prove otherwise. Read the "Document Checklist" in the back of this *Guide* to find out what information you must give to prove you did not break your continuous residence. What if I was outside the United States for 1 year or longer? In almost all cases, if you leave the United States for 1 year or more, you have disrupted your continuous residence. This is true even if you have a Re-entry Permit.

If you leave the country for 1 year or longer, you may be eligible to re-enter as a Permanent Resident if you have a Re-entry Permit. But none of the time you were in the United States *before you left* the country counts toward your time in continuous residence.

If you return within 2 years, some of your time *out of the country* does count. In fact, the last 364 days of your time out of the country (1 year minus 1 day) counts toward meeting your continuous residence requirement.

If you are applying based on 5 years as a Permanent Resident or 3 years as a Permanent Resident married to a U.S. citizen, you may file for naturalization up to 90 days before you meet the continuous residence requirement. For example, if you are applying based on 3 years of continuous residence as a Permanent Resident married to a U.S. citizen, you can apply any time after you have been a Permanent Resident in continuous residence for 3 years minus 90 days. You may send your application before you have met the requirement for continuous residence only. Therefore, you must still have been married to and living with your U.S. citizen spouse for 3 years before you may file your application. You must also meet all the other eligibility requirements when you file your application with USCIS.

The continuous residence requirement does not apply to certain types of applicants, such as members of the U.S. Armed Forces serving during designated periods of conflict.

Other provisions allow a few other types of applicants to remain abroad more than 1 year without disrupting their continuous residence status. To maintain their continuous residence while out of the country, these people must file an "Application to Preserve Residence for Naturalization Purposes" (Form N-470). See the table at the beginning of this section for more information on who can use Form N-470 and when it must be filed.

### Physical Presence in the United States

"Physical presence" means that you have actually been in the United States. Most applicants must be physically present in the United States for a certain number of months to be eligible for naturalization.

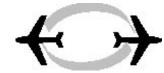
What is the difference between "physical presence" and "continuous residence"? Physical presence concerns the total number of days you were in the United States during the period required for your naturalization. Continuous residence concerns the time you resided lawfully in the United States without any single absence long enough to "break" that continuity for naturalization purposes.

### "Continuous Residence" Example

- An applicant became a Permanent Resident on January 1, 1994.
- She lived in the United States for 3 years, then returned to her native country for 1 year and 3 months.
- She got a Re-entry Permit before leaving the United States so that she could keep her Permanent Resident status.
- The applicant re-entered the United States with Permanent Resident status on April 1, 1998.

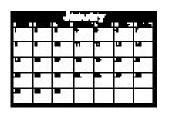
Question: When is the applicant eligible for naturalization?

# Answer: On April 2, 2002, 4 years and 1 day after she returned to the United States. The last 364 days the applicant was out of the United States count toward her time as a Permanent Resident in "continuous residence," but the 3 years in the United States before leaving do not.



When counting the total number of days you have been out of the country, include all trips you have taken outside the United States. This includes short trips and visits to Canada and Mexico. For example, if you go to Canada for a weekend, you must include that trip when you are counting how many days you have spent out of the country. Generally, partial days spent in the United States count as whole days spent in the United States.

Certain types of applicants may count time abroad as time physically present in the United States. An example of this exception is an applicant who is abroad in the employment of the U.S. Government. See the table at the beginning of this section for more information.



## Time as a Resident in a USCIS District or State

Most people must live in the USCIS district or State in which they are applying for at least 3 months before applying. A district is a geographical area defined by USCIS and served by one of the USCIS "District Offices."

Students may apply for naturalization either where they go to school or where their family lives (if they are still financially dependent on their parents).

### **Effect of Removal Proceedings**

If you have been ordered removed, you are no longer eligible for naturalization. Your naturalization application also cannot be approved if a removal proceeding is pending against you. These restrictions apply to all naturalization applicants, except for those who are eligible for naturalization based on service in the Armed Forces.

### **Important Information for Military Personnel**

If you are applying for naturalization based on your own service in the Armed Forces of the United States, you may be eligible to apply under special provisions provided for in the Immigration and Nationality Act. For more information, request "Naturalization Information for Military Personnel" (Form M-599) from the USCIS Forms Line at 1-800-870-3676.

### **Good Moral Character**

To be eligible for naturalization you must be a person of good moral character. USCIS will make a determination on your moral character based upon the laws Congress has passed. In the following section, we describe some of the things USCIS may consider.

Criminal Record. Committing certain crimes may cause you to be ineligible for naturalization (USCIS calls these "bars" to naturalization). You cannot establish that you are a person of good moral character if you have been convicted of murder, at any time, or of any other aggravated felony, if you were convicted on or after November 29, 1990.

Other offenses may be temporary bars to naturalization. Temporary bars prevent an applicant from qualifying for citizenship for a certain period of time after the offense.

The "Application for Naturalization" (Form N-400) asks several questions about crimes. You should report all offenses that you have committed including any that have been expunged (removed from your record) and any that happened before your 18th birthday. If you do not tell USCIS about these offenses and we find out about them, you may be denied naturalization (even if the original offense was not a crime for which your case would have been denied).

If you have been arrested or convicted of a crime, you must send a certified copy of the arrest report, court disposition, sentencing, and any other relevant documents, including any countervailing evidence concerning the circumstances of your arrest and/or conviction that you would like USCIS to consider. Note that unless a traffic incident was alcohol or drug related, you do not need to submit documentation for traffic fines and incidents that did not involve an actual arrest if the only penalty was a fine of less than \$500 and/or points on your driver's license.

Please note that if you have committed certain serious crimes, USCIS may decide to remove you from the United States. If you have questions, you may want to seek advice from an immigrant assistance organization or an immigration attorney before applying.

**Lying.** If you do not tell the truth during your interview, USCIS will deny your application for lacking good moral character. If USCIS grants you naturalization and you are later found to have lied during your interview, your citizenship may be taken away.

### **Examples of Things That Might Demonstrate a Lack of Good Moral Character**

- Any crime against a person with intent to harm.
- Any crime against property or the Government that involves "fraud" or evil intent.
- Two or more crimes for which the aggregate sentence was 5 years or more.
- Violating any controlled substance law of the United States, any State, or any foreign country.
- Habitual drunkenness.
- Illegal gambling.
- Prostitution.
- Polygamy (marriage to more than one person at the same time).
- Lying to gain immigration benefits.
- Failing to pay court-ordered child support or alimony payments.
- Confinement in jail, prison, or similar institution for which the total confinement was 180 days or more during the past 5 years (or 3 years if you are applying based on your marriage to a United States citizen).
- Failing to complete any probation, parole, or suspended sentence before you apply for naturalization.
- Terrorist acts.
- Persecution of anyone because of race, religion, national origin, political opinion, or social group.

### **English and Civics**



According to the law, applicants must demonstrate:

- "An understanding of the English language, including an ability to read, write, and speak...simple words and phrases...in ordinary usage in the English language...."
- "A knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States...."

This means that to be eligible for naturalization, you must be able to read, write, and speak basic English. You must also have a basic knowledge of U.S. history and government (also known as "civics").

What if I cannot meet the English or civics requirements? Certain applicants, because of age and time as a permanent resident; or others because of a disability, have different English and civics requirements.

*Age* — There are three important exemptions for English testing based on an applicant's age and time as a Permanent Resident:

- (a) If you are over 50 years old and have lived in the United States as a Permanent Resident for periods totaling at least 20 years, you do not have to take the English test. You do have to take the civics test in the language of your choice.
- (b) If you are over 55 years old and have lived in the United States as a Permanent Resident for periods totaling at least 15 years, you do not have to take the English test. You do have to take the civics test in the language of your choice.

(c) If you are over 65 years old and have lived in the United States as a Permanent Resident for periods totaling at least 20 years, you do not have to take the English test. You do have to take the civics test in the language of your choice. Designated test questions have been selected for you to study and are identified within the list of 100 civics test questions, which can be found at www.uscis.gov under Education and Resources.

To qualify for one of these exceptions, your time as a Permanent Resident does not have to be continuous. You are eligible for the exemption as long as your total time residing in the United States (as a Permanent Resident) is at least 15 or 20 years. You may not count time when you were not a Permanent Resident.



You must meet these requirements for age and time as a Permanent Resident at the time you file your application to qualify for an exemption.

If you qualify for an exemption of English testing based on age and time as a Permanent Resident, an interpreter, who is proficient in English and the language of your choice, must accompany you to the interview. **Disability** — If you have a physical or developmental disability or a mental impairment so severe that it prevents you from acquiring or demonstrating the required knowledge of English and civics, you may be eligible for an exception to these requirements. To request an exception, you must file a "Medical Certification for Disability Exceptions" (Form N-648). If you believe you qualify, contact a licensed medical or osteopathic doctor or licensed clinical psychologist who will need to complete and sign your Form N-648.

To apply for a disability exception, your disability:

- Must be at least 1 year old (or be expected to last 1 year); and
- Must not have been caused by illegal drug use.

If you qualify for this exception, an interpreter, who is proficient in English and the language of your choice, must accompany you to the interview.

Important

If you qualify for a medical exception from the English and civics requirement, you must still be able to take the Oath of Allegiance to the United States. If you cannot communicate an understanding of the meaning of the Oath because of a physical or mental disability, USCIS may excuse you from this requirement. **Disability** Accommodations — Under section 504 of the Rehabilitation Act of 1973, USCIS provides accommodations or modifications for applicants with physical or mental impairments that make it difficult for them to complete the naturalization process. In order for USCIS to have enough advance notice to respond to accommodation requests, applicants are encouraged to state their needs on the place provided in the "Application for Naturalization" (Form N-400).

How can I prepare for the English and civics tests? Many schools and community organizations help people prepare for their naturalization tests.

USCIS has a variety of study materials available for the naturalization test at **www.uscis.gov**. These materials include the 100 civics (history and government) questions and answers; reading and writing vocabulary lists; Civics Flash Cards; and the study booklet, *Learn About the United States: Quick Civics Lessons*. In addition, you can find links to other Internet sites that can help you get more information on U.S. history and government and help you find English classes in your area.

### Attachment to the Constitution



All applicants for naturalization must be willing to support and defend the United States and our Constitution. You declare your "attachment" to the United States and our Constitution when you take the Oath of Allegiance. In fact, it is not until you take the Oath of Allegiance that you actually become a U.S. citizen.

What does the Oath require? When you take the Oath, you must promise to do three things:

(1) Renounce Foreign Allegiances. As stated in the Oath, you must renounce all foreign allegiances to become a U.S. citizen.

### The Oath of Allegiance

I hereby declare, on oath,

- that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen;
- that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic;
- that I will bear true faith and allegiance to the same;
- that I will bear arms on behalf of the United States when required by the law;
- that I will perform noncombatant service in the Armed Forces of the United States when required by the law;
- that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

(2) Support the Constitution. You must also be willing to support and defend the principles of the Constitution and the laws of the United States.

(3) Serve the United States. When required by law, you must be willing to (a) fight in the U.S. Armed Forces, (b) perform noncombatant service in the U.S. Armed Forces, and (c) perform civilian service for the United States.

What if I am against fighting in the military because of my beliefs? If, because of your religious teachings and beliefs, you are against fighting or serving in the military, USCIS may exempt you from these requirements. You will need to send a letter with your application requesting a modified Oath and explaining why you are unable to take the Oath as it is written. Please see page 38 for more information about this process.

What else will USCIS consider about my promise to serve the United States? In addition to your promise to serve the United States when required, USCIS also considers the following three things when determining if you are truly willing to serve the United States:

(1) Selective Service — If you are male, you generally need to register with the Selective Service System before applying for naturalization. If you are male and lived in the United States (in any status other than as a lawful nonimmigrant) during ages 18 through 25, you must be registered with the Selective Service System. If you are male and entered the United States after you turned 26 years old, you do not have to register with the Selective Service. If you were required to register, you will need to provide your Selective Service number to USCIS when you apply. You may get your Selective Service number by calling **1-847-688-6888**. For men born prior to 1960, this information can be obtained by writing the Selective Service, Records Division at:

Selective Service System National Headquarters Arlington, VA 22209-2425

If you have not registered, you must register at a United States Post Office or on the Selective Service System's Internet site to receive a Selective Service number. The Selective Service System Internet site can be reached at **www.sss.gov** or through the USCIS Internet site at **www.uscis.gov**. You must have a Social Security number to register on the Internet.

If you were required to register, but did not register before you turned 26, you must do the following:

- Call **1-847-688-6888** or register online at **www.sss.gov** and complete the Selective Service System's Questionnaire Form. Note that registering online may speed up the process;
- Receive a "status information" letter from the Selective Service; and
- Send the "status information" letter with your application.

(2) Alien Discharge from the U.S. Armed

*Forces* — If you ever received an exemption or discharge from the U.S. Armed Forces because you are an alien, you may not be eligible for naturalization.

### (3) Desertion from the U.S. Armed

*Forces* — If you were ever convicted of desertion from the U.S. Armed Forces, you are not eligible for naturalization. Desertion means that you left military service before you were discharged.



## Fact Sheet

Dec. 8, 2010

### **USCIS** Initiative to Combat the Unauthorized Practice of Immigration Law

### **Introduction**

The unauthorized practice of immigration law (UPIL) endangers the integrity of our immigration system and victimizes members of the immigrant community. U.S. Citizenship and Immigration Services (USCIS) plans to launch an initiative to combat this exploitative practice by:

- Promoting public understanding of the best ways to find bona fide legal advice and avoid scams;
- Building capacity for legitimate assistance and services; and
- Supporting enforcement action against those who engage in the unauthorized practice of immigration law.

### **Unauthorized Practice of Immigration Law**

The unauthorized practice of immigration law occurs when those who are not attorneys or accredited representatives:

- Provide legal assistance to applicants or petitioners in immigration matters;
- Charge more than a nominal fee; or
- Hold themselves out to be qualified in legal matters.

### Locally Focused Engagement Plan

Since January 2010, USCIS has been working with internal and external stakeholders to understand the community's concerns about UPIL. After hosting an initial dialogue with the public earlier this year, the agency convened an internal working group to analyze best practices and design a comprehensive public-engagement strategy.

USCIS will begin the initiative with a focus on six pilot cities: New York, Baltimore, Atlanta, Detroit, San Antonio, and Sacramento. These cities were selected based on the following criteria:

- Geographic diversity;
- Diversity of immigrant communities;
- Well-established and recent immigration gateways;
- Identified need for additional Board of Immigration Appeals (BIA) recognized organizations and accredited representatives; and
- Mix of cities with varying degrees of existing UPIL efforts and resources.

In the first half of 2011, USCIS will host engagement sessions in the six pilot cities to collect input on specific local concerns. The engagement effort will have two areas of focus: 1) to solicit the expertise of federal, state, and local government partners on current UPIL trends and enforcement tools; 2) to hear input from community stakeholders on the scope of the local UPIL problem, the current resources available to them, and the need for further resources.

USCIS plans to expand this initiative nationwide in 2011.

### THE OPERATION OF THE IMMIGRANT NUMERICAL CONTROL SYSTEM

The Department of State is responsible for administering the provisions of the Immigration and Nationality Act (INA) relating to the numerical limitations on immigrant visa issuances. This information sheet explains the operation of the immigrant number allotment and control system.

### **1. HOW THE SYSTEM OPERATES:**

At the beginning of each month, the Visa Office (VO) receives a report from each consular post listing totals of documentarily qualified immigrant visa applicants in categories subject to numerical limitation. Cases are grouped by foreign state chargeability/preference/priority date. No names are reported. During the first week of each month, this documentarily qualified demand is tabulated.

VO subdivides the annual preference and foreign state limitations specified by the INA into monthly allotments. The totals of documentarily qualified applicants which have been reported to VO, are compared each month with the numbers available for the next regular allotment. The determination of how many numbers are available requires consideration of several of variables, including: past number use; estimates of future number use and return rates; and estimates of Citizenship and Immigration Service demand based on cut-off date movements. Once this is done, the cut-off dates are established and numbers are allocated to reported applicants in order of their priority dates, the oldest dates first.

If there are sufficient numbers in a particular category to satisfy all reported documentarily qualified demand, the category is considered "Current". For example: If the monthly allocation target is 3,000 and we only have demand for 1,000 applicants the category can be "Current".

Whenever the total of documentarily qualified applicants in a category exceeds the supply of numbers available for allotment for the particular month, the category is considered to be "oversubscribed" and a visa availability cut-off date is established. The cut-off date is the priority date of the first documentarily qualified applicant who could not be accommodated for a visa number. For example: If the monthly target is 3,000 and we have demand for 8,000 applicants, then we would need to establish a cut-off date so that only 3,000 numbers would be allocated. In this case, the cut-off would be the priority date of the 3,001st applicant.

Only persons with a priority date earlier than a cut-off date are entitled to allotment of a visa number. The cut-off dates are the 1st, 8th, 15th, and 22nd of a month, since VO groups demand for numbers under these dates. (Priority dates of the first through seventh of a month are grouped under the 1st, the eighth through the fourteenth under the 8th, etc.)

VO attempts to establish the cut-off dates for the following month on or about the 8th of each month. The dates are immediately transmitted to consular posts and Citizenship and Immigration Services (CIS), and also published in the Visa Bulletin and online at the CA Web site (www.travel.state.gov). Visa allotments for use during that month are transmitted to consular posts. CIS requests visa allotments for adjustment of status cases only when all other case processing has been completed.

### 2. DEFINITION OF SOME TERMS:

### **Priority date:**

Normally, the date on which the petition to accord the applicant immigrant status was filed.

### Allotment:

The allocation of an immigrant number to a consular office or to CIS. This number may be used for visa issuance or adjustment of status.

### Foreign State Chargeability:

Ordinarily, an immigrant is chargeable for visa purposes to the numerical limitation for the foreign state or dependent area in which the immigrant's place of birth is located. Exceptions are provided for a child (unmarried and under 21 years of age) or spouse accompanying or following to join a principal to prevent the separation of family members, as well as for an applicant born in the U.S. or in a foreign state of which neither parent was a native or resident. Alternate chargeability is desirable when the visa cut-off date for the foreign state of a parent or spouse is more advantageous than that of the applicant's foreign state.

### **Documentarily Qualified**:

The applicant has obtained all documents specified by the consular officer as sufficient to meet the formal visa application requirements, and necessary processing procedures of the consular office have been completed.

## **3. BACKGROUND INFORMATION ON THE SYSTEM AND CLARIFICATION OF SOME FREQUENTLY MISUNDERSTOOD POINTS:**

Applicants entitled to immigrant status become documentarily qualified at their own initiative and convenience. By no means has every applicant with a priority date earlier than a prevailing cut-off date been processed for final visa action. On the contrary, visa allotments are made only on the basis of the total applicants reported documentarily qualified each month. Demand for visa numbers can fluctuate from one month to another, with the inevitable impact on cut-off dates.

If an applicant is reported documentarily qualified but allocation of a visa number is not possible because of a visa availability cut-off date, the demand is recorded at VO and an allocation is made as soon as the applicable cut-off date advances beyond the applicant's priority date. There is no need for such applicant to be reported a second time.

Visa numbers are always allotted for all documentarily qualified applicants with a priority date before the relevant cut-off date, as long as the case had been reported to VO in time to be included in the monthly calculation of visa availability. Failure of visa number receipt by the overseas processing office could mean that the request was not dispatched in time to reach VO for the monthly allocation cycle, or that information on the request was incomplete or inaccurate (e.g., incorrect priority date). Allocations to Foreign Service posts outside the regular monthly cycle are possible in emergency or exceptional cases, but only at the request of the office processing the case. Note that should retrogression of a cut-off date be announced, VO can honor extraordinary requests for additional numbers only if the applicant's priority date is earlier than the retrogressed cut-off date.

Not all numbers allocated are actually used for visa issuance; some are returned to VO and are reincorporated into the pool of numbers available for later allocation during the fiscal year. The rate of return of unused numbers may fluctuate from month to month, just as demand may fluctuate. Lower returns mean fewer numbers available for subsequent reallocation. Fluctuations can cause cut-off date movement to slow, stop, or even retrogress. Retrogression is particularly possible near the end of the fiscal year as visa issuance approaches the annual limitations.

Per-country limit: The annual per-country limitation of 7% is a cap, which visa issuances to any single country may not exceed. Applicants compete for visas primarily on a worldwide basis. The country limitation serves to avoid monopolization of virtually all the annual limitation by applicants from only a few countries. This limitation is not a quota to which any particular country is entitled, however. A portion of the numbers provided to the Family Second preference category are exempt from this per-country cap. The American Competitiveness in the Twenty-First Century Act (AC21) removed the per-country limit in any calendar quarter in which overall applicant demand for Employment-based visa numbers is less than the total of such numbers available.

Applicability of Section 202(e): When visa demand by documentarily qualified applicants from a particular country exceeds the amount of numbers available under the annual numerical limitation, that country is considered to be oversubscribed. Oversubscription may require the establishment of a cut-off date which is earlier than that which applies to a particular visa category on a worldwide basis. The prorating of numbers for an oversubscribed country follows the same percentages specified for the division of the worldwide annual limitation among the preferences. (Note that visa availability cut-off dates for oversubscribed areas may not be later than worldwide cut-off dates, if any, for the respective preferences.)

# BRIDGING THE GAP

# **BUSINESS LAW**

### TRANSACTIONAL BUSINESS LAW

### WHAT IS TRANSACTIONAL BUSINESS LAW?

Not litigation

Related to business

### IN WHAT CAPACITIES WOULD YOU PRACTICE TRANSACTIONAL BUSINESS LAW?

- In-House Counsel
- Outside Counsel
- Government Agency

### WHAT KIND OF WORK WOULD YOU ANTICIPATE PERFORMING AS A TRANSACTIONAL BUSINESS ATTORNEY?

- Contract negotiation, drafting and review
- Business entity formation and documentation
- Human Resources activities
- Banking/Finance documentation, compliance
- Risk management and insurance procurement & advice
- Compliance documentation and advice
- Real property leases and sales documentation

- Governmental entity representation or interaction
- Corporate general counsel and advice
- Research and advise on proposed, new and existing laws

### WHAT KIND OF STRATEGIC PARTNERS SHOULD YOU HAVE AS A TRANSACTIONAL BUSINESS ATTORNEY?

- A good accountant
- A good business litigator

### WHAT KIND OF RESOURCES ARE AVAILABLE TO YOU AS A TRANSACTIONAL BUSINESS ATTORNEY?

- Bar Association resources
- Other organizations
- Written materials