

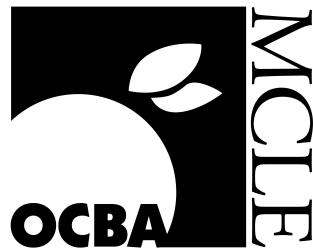
*The Orange County Bar Association*  
*Covid-19 Task Force & Alternative Dispute Resolution Section Present*

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# **The Effective Use of Remote Mediation: Tips from the Pros**

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Friday, August 14, 2020



Speakers

**Hon. David R. Chaffee, Ret.**  
*ADR Services, Inc.*

**Hon. Franz E. Miller, Ret.**  
*JAMS*

**Jill R. Sperber, Esq.**  
*Judicate West*

Moderator

**Darrell P. White, Esq.**  
*Kimura, London & White, LLP*

Introduction By:

**Marc D. Alexander, Esq.**  
*OCBA ADR Section*

# Nuts and Bolts of Videoconference Dispute Resolution in the Time of COVID-19

By Marc Alexander



Marc Alexander is a mediator and litigator at AlvaradoSmith APC. He authors the blog *California Mediation and Arbitration* ([www.calmediation.org](http://www.calmediation.org)) and co-contributes to the blog *California Attorneys Fees* ([www.calattorneysfees.com](http://www.calattorneysfees.com)). His email is [malexander@alvaradosmith.com](mailto:malexander@alvaradosmith.com).

By necessity, I have started to conduct mediations via videoconference. This was an unanticipated development in my practice. Our local rules in California's Central District only contemplated that, at the discretion of the mediator, parties residing outside the Central District could have a representative with final settlement authority available by phone during the entire proceeding in lieu of a personal appearance. Evidently, the local rules did not contemplate a pandemic. All of that changed with COVID-19 amid valid concerns about public health and safety.

Also, in the Central District, the largest group of cases that must be mediated are Americans with Disabilities Act cases. The ADA plaintiffs have disabilities affecting access, and a significant number are immunocompromised. Under current conditions, the alternatives are to cancel mediations, continue mediations, conduct mediations by phone, chat, or email, or conduct mediations by videoconference. In many of the ADA cases that must be mediated, a videoconference could be the best alternative in the absence of personal appearances.

In March, responding to the COVID-19 crisis, the ABA and the California Lawyers Association provided webinar offerings about online mediation.

The advantages to a videoconference are numerous. It can be done efficiently, without traveling by the attorneys, clients, or insurance company representatives. Costs and time are less than with in-person meetings. The technology is flexible, allowing for joint sessions, separate caucuses, screen sharing, chat, and document exchange. A videoconference, like a phone call, can be initiated early during a lawsuit, and it is easy to schedule follow-up sessions. It can be lower-keyed than an in-person confrontation, helping some parties to focus on interests, rather than emotions. Videoconferencing seems familiar, because we are all familiar with absorbing information from computer and television screens, and familiar with the human face. Videoconferencing provides visual and audio information, which is very important to those who are visually oriented. And videoconferencing allows for social distancing, at a

time when we are required by state and local governments to “shelter in place.”

There are disadvantages to videoconferencing. We may lose the nuances of demeanor: Did the attorneys roll their eyes? Did the client sigh? Did a note get passed between attorney and client? Some persons have disabilities that are not suited to videoconferencing. In fact, some ADA lawsuits are now brought because websites allegedly fail to provide proper access to the visually impaired. Retired judges who mediate may believe the aura of authority that comes with having been clothed in judicial robes will be dimmed, and mediators with forceful personalities may believe they lose an advantage in a videoconference. Also, the very ease with which a videoconference can be conducted may make participants feel less invested in the process. Confidentiality, a requirement for all mediations, can be breached with greater ease in a videoconference, and a smartphone screenshot could end up posted to a website. In costly bet-the-farm intellectual property litigation, there may be intense concerns about confidentiality. Zoom, however, has addressed confidentiality concerns by requiring passwords and creating virtual waiting rooms, allowing the host to admit or remove a participant. Perhaps the most serious problem is simply that some people are very comfortable with technology and others are not, based on their personality, ability, and economic opportunity. It could be unfair to conduct a videoconference if one side does not have the skills or the necessary hardware and software to handle it. In short, videoconferencing is not for every dispute, but it can be effective in many disputes, as well as for resolving part of a dispute.

There are several platforms for videoconferencing that can be used for mediation, including Zoom, RingCentral Meetings (powered by Zoom), Legaler (designed for lawyers),

and CREK ODR (online dispute resolution). Free versions tend to have limitations making them unsuitable for lengthy or multi-party mediations. CREK ODR, which I have not yet used, offers the interesting solution of a Virtual Mediation Room, coming with domain, private and joint caucus, document authoring and management, custom intake, email communication, and video integration features. Whichever platform one chooses, one should consider the level of security provided: what encryption is provided, how audio and video are stored, where they are stored, how long they are stored, and who controls the ability to record.

What “best practices” are emerging? The California Lawyers Association has posted a helpful checklist of best practices for using Zoom, which are also good suggestions for other videoconference platforms. For participants, the tips include: (1) performance is optimized when the Zoom software/app is used, instead of calling in; (2) log in ten minutes early to test audio/video settings, and be prepared to download a free app; (3) mute audio unless speaking; (4) use headset or earbuds to improve audio; (5) if you use more than one device, mute all but one to avoid feedback; (6) if you’re having trouble with audio or video, disconnect and log in again; (7) check the platform website to learn the status of technical problems; and (8) instructions and guides can be found on the platform website.

Here are additional tips: avoid backlighting, make sure you have adequate bandwidth and a reliable internet connection, dress comfortably but do not wear shiny clothing, remove background distractions, clean up your desktop and browser bookmarks, turn off audible notifications and your smart phone, if you are not using it. Let persons know that you

have a scheduled conference and do not wish to be interrupted. Corral pets and small children.

Mediators acting as conference hosts can set ground rules in advance. And they may wish to consider adding important ground rules to a retention letter. Address the options available for participation: dialing in by computer, tablet, or phone, and whether the session will be video or audio. Find out if anyone has an objection to being seen by video, or if anyone has accessibility issues. State whether or not recording will be permitted, and if so, reemphasize the importance of maintaining confidentiality. Provide all parties with an opportunity to participate in a test run before the actual mediation session. Establish who may be present in the session. Explain that it will be possible to hold private separate caucuses online. Direct parties to an online user's guide for the platform you will use. Address how documents will be presented and signed. And have a backup plan in case of technical failure: get cell numbers, landline numbers, and fax numbers. In case of a technology breakdown, what will you do first? Log in again? Call cell numbers? Send text messages? Invite questions about procedure.

With Zoom and many other platforms, mediators' invitations to participate are delivered by email and can be scheduled for any date and time. Track who accepts invitations to participate. Before beginning a session, study the platform settings with care, including options for "advanced" settings. When the session begins, take roll, as it is easy to lose track of participants online. By taking roll, the mediator learns if someone who should be present has failed to show up. Ask if anyone is present whom you cannot hear or see. Take a few minutes to describe the tool bar, and the views that are available, such as a view of the speaker, or a gallery view of all participants. Mediators

should further note: the mediator's/host's view of the screen will not be identical to the other participants' views, because the mediator will have controls that other participants may not have. For example, the mediator may be able to control participation and create and manage breakout rooms, and other participants may lack those controls and icons on their screens.

One of the most frequent questions asked of mediators is: when do you do joint sessions, and when do you separately caucus with the parties? In California, the trend is to separately caucus, at least before the mediator has a sense of how the parties will react in a joint meeting, and whether a joint meeting can serve a useful purpose. While an initial joint session can be efficient for gathering information and laying down ground rules, an in-person joint session can be fraught with risk if the parties and counsel are emotional or angry. In my experience, the social distance in a videoconference makes joint sessions less emotional and more civil.

When online mediation ends, I like to go to a joint session, because this offers the parties an opportunity for valedictory words and a courteous, albeit virtual, "handshake" analogous to the one that I like to see at the end of an in-person meeting. I prefer to do this whether or not the dispute settles.

If the parties reach agreement and want to sign a document during the mediation, this can be done by fax or email, provided that the agreement explains that fax, email and counterparts are adequate for signing. Some of the platforms allow for the immediate exchange of documents without going to an outside service. Also, there are additional platforms that enable parties to electronically sign documents, such as HelloSign, VineSign, Adobe Sign, and DocuSign.

I am learning by doing, and there is no substitute for practice. However, there are resources I found to be particularly helpful: YouTube videos demonstrating the different platforms, online instructions and guides for the different platforms, and Simon Boehme's very helpful slides showing how to use Zoom, available for free at [www.odrzoom.com/](http://www.odrzoom.com/).

Online dispute resolution is a relatively new field with emerging standards and principles. The National Center for Technology and Dispute Resolution lists some of those emerging standards and principles at the web site [odr.info/standards/](http://odr.info/standards/). ICODR, the International Council for Online Dispute Resolution, has stated that quality online dispute resolution

must be accessible, accountable, competent, confidential, equal, fair/impartial/neutral, legal, secure and transparent.

After COVID-19 has faded, online mediation will only grow in strength and acceptance. Just as it took litigators time to become accustomed to the use of CourtCall, they will become familiar with mediation videoconferences. Perhaps one day the courts will also accept that tool for mandatory settlement conferences. Mediation videoconferences will not be the best dispute resolution tool for all types of litigation, but the efficiency, time saving, cost saving, and flexibility offered by videoconference platforms will make them an appealing option for many mediations.

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# Speaker Biographies

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## Hon. David R. Chaffee (Ret.)

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### Profile

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After a twenty-five year career as a judge of the Orange County Superior and Municipal Courts, Hon. David Chaffee (Ret.) brings a wealth of civil litigation experience to bear as a neutral at ADR Services, Inc. Eighteen of his years on the bench were devoted to general civil trial work, with an additional almost two years assigned to handle probate and mental health calendars and trials. Considered approachable, friendly, and courteous, Judge Chaffee was named the recipient of the 2012 Civility Award by the Orange County Chapter of the American Board of Trial Advocates.

In addition to presiding over hundreds of civil jury, court trials, and probate trials covering a wide array of civil disputes, Judge Chaffee's experience prior to his appointment to the bench also provides him with unique insight into a number of civil practice areas. Immediately after law school, Judge Chaffee served as a Deputy Attorney General for the California Department of Justice for four years, where he handled numerous criminal appeals, federal civil rights and habeas corpus litigation, criminal trials, and administrative and licensing matters. Moving to the Office of the County Counsel for the County of Orange, Judge Chaffee then handled probate cases for six years, followed by a five year assignment handling tax litigation representing the Assessor and Tax Collector. He then spent five years as the County's designated CEQA counsel, handling environmental and land use litigation, before being appointed to the bench in 1994.

Judge Chaffee served the Orange County Court as a member and/or alternate of its Executive Committee, as a subcommittee chair for long-range planning, and as the Orange County judicial representative and member of the board of California Judges Association. Outside his work for the Court, Judge Chaffee is the former president and a current member of the board of directors of the William P. Gray Legion Lex Inn of Court; a member of the board of trustees for Devil Pups, Inc., a youth citizenship program allied with the United States Marine Corps; and a founding and current member of the Beach Crew Alumni Association supporting the Long Beach State rowing teams.

## **AREAS OF EXPERTISE**

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- Business and Contracts
- Real Property and HOA Litigation
- Personal Injury and Product Liability
- Insurance Coverage
- Medical and Legal Malpractice
- Construction Disputes
- Employment
- Probate, Estates and Trusts
- Government Law including Taxation
- CEQA and Land Use

## **JUDICIAL EXPERIENCE**

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### **JUDGE OF THE SUPERIOR COURT, COUNTY OF ORANGE 1997-2019**

- 2006-2019 General Jurisdiction Civil Trial Panel
- 2004-2006 Harbor/South Court Panel
- 1998-2004 General Jurisdiction Civil Trial Panel
- 1997-1998 Probate and Mental Health Panel

### **JUDGE OF THE ORANGE COUNTY HARBOR MUNICIPAL COURT 1994-1997**

- 1997 Elevated by Governor Wilson to the Superior Court
- 1994 Appointed by Governor Pete Wilson

## **LEGAL EXPERIENCE**

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### **DEPUTY AND SENIOR DEPUTY COUNTY COUNSEL, COUNTY OF ORANGE 1978-1994**

1989-1994 Designated assignment as CEQA counsel for the County. Represented the Board of Supervisors, the OC Sheriff's Department, OC Environmental Management Agency, and various other county departments in environmental and land use litigation.

1984-1989 Represented OC Assessor and OC Tax Collector in tax litigation matters, including real property valuation, change in ownership reassessment events, treatment of corporate real property assets, and tax collection issues.



1978-1984 Represented OC Public Administrator/Guardian in hundreds of decedents estates and probate conservatorship matters.

## **DEPUTY ATTORNEY GENERAL, CALIFORNIA DEPARTMENT OF JUSTICE 1974-1978**

1974-1978 Criminal Division with short-term nine month assignment on loan to the Administrative Law Section of the Civil Division

## **AWARDS**

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2012 Recipient of the Civility Award by the Orange County Chapter of the American Board of Trial Advocates (ABOTA)

## **EDUCATION**

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1973 J.D., Loyola Law School of Los Angeles  
Law Review; St. Thomas More Law Honor Society  
1969 B.A., California State University, Long Beach

## **BAR ADMISSIONS**

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Judge Chaffee is admitted to practice before all the courts of the State of California; the United States District Courts for the Southern, Central, and Eastern Districts of California; the United States Court of Appeals for the Ninth Circuit; and the United States Supreme Court.

## **Representative Cases**

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### **BUSINESS AND COMMERCIAL CONTRACT**

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- Plaintiff alleged fraud based on assertion that defendant tricked him into conveying a majority interest in a commercial real estate building in exchange for a minority interest in a limited liability company owning undeveloped land in Riverside County. Defendant alleged to have inflated the value of the land and misrepresented development approvals and permits.
- Defendants operated a food court in a grocery store owned by plaintiff. A dispute ensued about money the defendants owed, and the parties signed a settlement agreement setting forth a particular amount owed. Defendants failed to pay. Plaintiff sued for breach of the settlement agreement, and defendants cross-complained arguing that they signed the agreement under economic duress and that plaintiff had committed fraud.

- Dispute involving the business operations of various martial arts studios practicing a unique martial arts style. Plaintiffs had developed the unique martial arts style and operated a franchise company. Defendants were franchisees. Defendants contracted with plaintiffs to purchase their interests in various limited liability companies that held licenses for the various franchise studios. The relationship soured and the purchase agreements were not consummated. Subsequently, defendants began offering martial arts operations under a different company name and ceased any business relationship with plaintiff. Plaintiffs sued defendants for allegedly entering into an unlawful and secret plan to destroy plaintiffs by illegally rebranding their studios and terminating their franchise agreements.
- Plaintiff provided temporary nursing personnel to defendant hospital based on a series of supplemental staffing agreements for two-year terms. Plaintiff sued hospital asserting causes of action for fraud and breach of contract seeking over \$244k in invoices for services rendered. A few years earlier, the hospital had been sued for medical malpractice and settled for more than \$500k. The hospital asserted that plaintiff's supplied nurse had been the cause of the malpractice and demanded reimbursement from plaintiff, which was rejected.
- Plaintiff purchased a 10-story office building in Midland, Texas. The day before the purchase closed, plaintiff's representative contacted defendant insurance broker to obtain fire insurance for the building. Defendant filled out and signed an insurance application where he represented that the building had an operational sprinkler system. Whether plaintiff's representative told defendant that the building had sprinklers was disputed. The building did not have a sprinkler system. Insurance company issued a fire insurance policy with a limit of \$14,750,000. The policy required the building to have an automatic sprinkler system and an automatic fire alarm protecting the whole building. Later the same year, an arsonist set fire to the building. The insurance company denied coverage based on the absence of the sprinkler system. Plaintiff sued defendant insurance broker for breach of contract and negligence.
- Business partnership agreement contained a provision that if an offer was made to purchase the entire business, either party had the right of first refusal to purchase it. Majority owner received an offer from defendant and gave notice to plaintiff minority owner. Plaintiff gave notice that she was exercising her right to purchase, but majority owner refused to sell the business to her and instead sold it to defendant. Plaintiff sued defendants alleging a sham sale. Causes of action for conspiracy, fraud, violation of Pen. Code 496 (receiving stolen property), declaratory relief, imposition of a constructive trust, conversion, and for an accounting.
- Plaintiff was a minority owner of a freight forwarding company; defendant was the majority owner and president of the company. Plaintiff alleged that defendant misused and misappropriated company funds, including writing checks to cash and keeping the money for herself, and paying her own personal expenses. Plaintiff further alleged that he was denied access to company books and records by defendant.

- Plaintiff entered into an agreement with defendants whereby plaintiff would provide financing for the purchase of shrimp for import. Defendant would handle the purchase, transport and sale of the shrimp. The net proceeds were to be evenly split between them. Plaintiff financed the purchase of Ecuadorian shrimp at a price of \$700k. Defendant took possession and complete control of eight containers of frozen shrimp and caused them to be sold. All the while defendant represented to plaintiff that the market was bad and that all eight containers of frozen shrimp remained unsold and stored. Primary issue was whether the owners of defendant company were alter egos for purpose of liability for the fraud.
- Lawyer and his law firm purchased plaintiff's business facilitating penny stock sales only to find out that plaintiff had failed to disclose that she had settled a SEC fraud prosecution concerning the business. The lawsuit involved many issues such as unwinding the sale, refund of purchase deposit, and return of internet domain names.
- Plaintiff invented and patented a consumer product that he proposed to sell via direct response television, a campaign that would cost \$1.4 million. Defendants agreed to fund the campaign, but required plaintiff pay \$20k up front in "bank fees." Further funding demands by defendants increased the total paid by plaintiff to \$150k. After months of delays and no campaign funding ever being received, plaintiff demanded refund of the \$150k. Plaintiff sued defendants for fraud and breach of contract, and sought refund of the monies advanced as well as lost profits.
- Two individuals, one a California resident and the other a Colorado resident, entered a loan agreement in which the California resident borrowed \$100k from the Colorado resident. The parties agreed that California law would apply and agreed upon an interest rate of 12%, a rate that was legal in Colorado but usurious in California. Plaintiff Californian borrower sued alleging causes of action for usury, cancellation of note, cancellation of life insurance policy security, and declaratory relief. Defendant lender cross-complained for breach of contract and reformation of the note.
- Over a period of time plaintiff loaned large quantities of gold and cash to defendants to allow them to conduct their gold and jewelry businesses. Defendant wrote the details of each loan transaction on the back of a business card, which she dated and signed and gave to plaintiff to keep as "marker" or "IOU" for the debt. For a short period of time, defendants paid the agreed upon interest payments on the various loans, but eventually ceased payment and denied that any loan had been received. Plaintiff sued for breach of oral contract, various fraud and misrepresentation causes of action, conversion, and common count money had and received.

- The lender on plaintiff's home loan instituted a non-judicial foreclosure, recorded notice of default and notice of trustee's sale against the property. Plaintiff filed suit against multiple banks and lending entities alleging a vast conspiracy to deflate the real property market, foreclose on existing loans, and then reap the profits when the conspirators allowed the market to recover. Plaintiff's causes of action included fraudulent concealment, intentional misrepresentation, misrepresentation, violation of Civ. Code sec. 2923.5 (recorded the notice of default without first making contact and interacting with plaintiff), unfair competition (B & P sec. 17200), and breach of contract.
- Plaintiff and defendant entered into an operating agreement for a rare coin wholesaler. After operating for several years, the majority shareholder terminated plaintiff as manager of the business and notified him one of the offices would close. The operating agreement was construed to require that within 30 days of plaintiff's withdrawal, defendant was required to value his interest in the company and allow him to purchase the inventory of coins at 110 percent of their liquidation market value. Action was filed to determine the amount of damages plaintiff had incurred due to his breach of a specific valuation date.
- Plaintiff entered into a sale agreement with defendant for the construction and purchase of a retail building. This action arose out of a dispute over which of two sections in the sale agreement governed plaintiff's remedy when defendant failed to meet the substantial completion date specified in the sale agreement. One section provided a remedy of per diem liquidated damages credited at the close of escrow; the other prescribed remedies generally for the breach of any term of the sale agreement, including termination of the agreement and a return of the deposit.
- Plaintiff sued defendant for breach of contract, alleging a tool grinding machine did not meet plaintiff's specific need as represented to defendant. After receiving a notice to appear and produce documents and things at trial, plaintiff sold at auction its equipment and inventory, including a computer, computer program and steel blades that defendant contended were relevant evidence to determination of the case. Issues revolved around remedies for spoliation of evidence.
- CEO of plaintiff company gave an employee of defendant company a list of plaintiff's shareholders. Defendant then used the list to contact the shareholders on the phone and offer them defendant's telemarketing services. Those calls prompted plaintiff to file suit against defendant for a variety of business-related causes of action including misappropriation of trade secrets, unfair business practices, and false advertising.

- Plaintiffs purchased undeveloped real property and formed a corporation to develop the property as a service station and car wash. Plaintiffs then entered into a loan agreement with defendant bank. The agreement conditioned upon proof of cash injection by plaintiffs in the amount of \$640k and personal guarantees by individual plaintiffs. Defendant bank found that only one third of the case injection had been made and sought to modify the terms of the loan. One of the loan guarantors then withdrew its guarantee. Thereafter, the defendant stopped funding construction but continued to make payments from the interest reserve to itself. Subsequently, defendant foreclosed and purchased the property via the foreclosure sale. Defendant then constructed a branch office at that location. Plaintiffs sued for breach of contract/wrongful foreclosure, breach of the implied covenant of GFFD, and unjust enrichment.
- Defendant energy company needed to raise equity capital for its growing business, and its salespeople sold company stock to investors under private placement offerings. Plaintiff worked in the sales department and brought in over \$8 million in revenue to defendant. As an incentive for its salespeople, defendant instituted a series of programs that tied compensation to the amount of revenue brought into the company. These programs detailed how much income, commission, and stock options each member of the department would earn. A dispute arose between plaintiff and defendant and plaintiff filed a complaint contending that defendant had breached its contract to issue and permit him to exercise his stock options.
- Plaintiff filed this class action against defendants who were in the business of exchanging customers' dollars into foreign currency for transmission to a foreign country. Plaintiff alleged that defendants committed unlawful, unfair, and fraudulent business practice under the UCL (B & P Code sec. 17200 et seq.), engaged in deceptive advertising under the false advertising law (B & P sec. 17500 et seq.), and violated the fiduciary duties imposed upon a trustee by Prob. Code secs. 16002 (duty of loyalty) and 16004 (conflict of interest), when they failed to disclose to the customer that they get a more advantageous rate of exchange on the wholesale market than they give the customer, and when they failed to give the customer the benefit of the better exchange rate.

## **CONSTRUCTION**

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- Lawsuit involving purported general contractor for condo remodel versus homeowners. After homeowners terminated the contract, a corporation owned by the contractor sued homeowners for money allegedly remaining outstanding on the project. Homeowners cross-complained against purported contractor and corporate plaintiff seeking disgorgement of all payments made for the project per B&P section 7031(b) because contractor failed to possess a contractor's license. Homeowners alleged their contract was exclusively with the contractor, not the corporation, and that they were later directed by contractor to make checks payable to the corporation. The corporation did have a contractor's license, while the contractor did not.

- Plaintiff sued contractor and various contractor owners and employees for breach of construction contract on a room addition to plaintiff's home. Individual defendant salesman/representative signed the contract on behalf of contractor. Contractor generally conceded that work was unfinished; the only remaining issue was liability of individual defendant salesman/representative.
- Subcontractor on a large commercial project failed to complete the application process and obtain the requisite contractor's license(s) before signing two separate contracts. The subcontractor's work was terminated before the projects were completed and without the sub having obtained full point of amounts it claimed were due under the contracts. The issue was whether B & P sec. 7031 barred subcontractor's recovery when it undertook performance of a contract without a contractor license, but became licensed before completion of the work.

## **EMPLOYMENT**

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- Plaintiff filed a complaint against her employer, restaurant franchisor, for claims based on violations of FEHA and CFRA. The FEHA claims included disability discrimination, failure to accommodate, failure to engage in the interactive process, and retaliation for exercising FEHA rights. She also alleged a violation of the UCL based on the FEHA violations underlying these causes of action. The complaint also alleged two claims based on violations of the CFRA: (1) interference with the CFRA and (2) retaliations for exercising rights under the CFRA. Finally, the complaint alleged a claim for wrongful termination in violation of public policy. Plaintiff, a lab technician, was promoted to lab coordinator in the quality assurance department. When she began reporting to a new supervisor, she believed that she was being micromanaged and subsequently that she had too much work. Plaintiff began to suffer stress-related medical issues and took a number of days off. After an extended history of medical visits and remedial employer actions, Plaintiff was terminated from her employment.
- Plaintiff, an immigrant from Asia, was employed by a high tech medical device company as a technician. Plaintiff was transferred from a clean room to the testing lab before subsequently being transferred back to the clean room. Plaintiff alleged constructive discharge, harassment based on age and race, retaliation, discrimination, and IIED. Defendant alleged that plaintiff's language skills were not sufficient to perform a testing role, and internal investigations at the time of alleged harassment did not support her claims.
- A commissioned sales employee sued his former employer for unpaid wages. Defendant paid plaintiff on a commission basis according to a signed Commission Rate Agreement. Defendant set aside plaintiff's commission fees in a designated account. Each commission fee was recorded on a commission sheet. Plaintiff designated his own weekly draw amounts which were then deducted from plaintiff's total earned commissions. After a heated discussion regarding disputed commission fees, defendant allegedly fired plaintiff, a fact disputed by defendant who expected plaintiff to return to work. Plaintiff alleged breach of contract, failure to pay commissions upon termination, willful failure to pay wages, failure to produce documents showing how the commissions were calculated and paid, breach of implied covenant of GFFD, unfair business practices, request for accounting, and fraud.

- Defendant advertised for a “Property Manager”. During an in-person interview at defendant’s residence, he advised plaintiff that the job required her to live at “company headquarters” - his Newport Beach residence - with room and board included as part of the compensation. Plaintiff accepted defendant’s offer of employment and she began work the same evening. Shortly thereafter, defendant allegedly made sexual advances and solicited sexual acts from her. Defendant allegedly informed plaintiff he was not interested in a platonic relationship with her, and he instead wanted her to become his caretaker and companion. When she refused, defendant fired her. Plaintiff sued for sexual harassment, breach of the implied covenant of GFFD, wrongful discharge, and Labor Code violations.
- Defendants are a nonprofit organization and its executive director. The defendant executive director hired plaintiff, who is openly homosexual, and plaintiff eventually became executive assistant to defendant. At some point, plaintiff and defendant began having an affair. Each testified that the other had become increasingly possessive, had anger problems, and were abusive. Defendant fired plaintiff. Plaintiff’s action contained causes of action for sexual harassment and discrimination, failure to take reasonable steps to prevent workplace discrimination, wrongful termination, interference with prospective economic advantage, tortious breach of contract, breach of the covenant of GFFD, retaliation, and infliction of emotional distress. The discovery battle raged for years with a determination that one of the parties had destroyed her computer hard drive rather than turn it over for forensic analysis.
- Plaintiffs were terminated from their senior positions with the OC Sheriff’s Department in what was characterized as layoffs necessitated by budget cuts following an economic downturn. Plaintiffs alleged that defendants violated the Police Officers Bill of Rights (POBRA). In particular, plaintiffs claimed that they had been denied the opportunity for an administrative appeal from the “punitive” act of termination/layoff.
- Plaintiff worked as a painter at a coastal Orange County hotel for four years. After surgery on his knee and foot, he developed two autoimmune blood disorders that went undiagnosed for several months. During this period, he used up all available medical leave and took additional time off. After he was diagnosed, his doctor informed defendant hotel that plaintiff needed a part-time work schedule for several more months. Defendant, apparently believing the request for accommodation was not due to a disability but for scheduling convenience, responded by terminating plaintiff’s employment. Plaintiff sued alleging a number of claims including disability discrimination under the Fair Employment and Housing Act.
- Plaintiff was denied an appointment to a lifetime tenured faculty position in university. Plaintiff then filed a civil action alleging age discrimination, and a petition for writ of administrative mandate seeking an order directing defendant to make the appointment.

## **GOVERNMENT RELATED ACTIONS**

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- Plaintiff citizen sued city for its allegedly illegal conduct in selectively enforcing baseless claims of a housing violation for a retaliatory motive. Dispute centered on a granny flat constructed over plaintiff's garage sometime prior to plaintiff's purchase of the property. The issue arose when plaintiff commenced eviction proceedings against tenant who complained to city about his allegedly non-permitted residence. A city inspector arrived and cited plaintiff, leading to city determination to condemn the garage apartment.
- Plaintiff filed an application with city to open and conduct an adult entertainment business in a particular industrial-commercial section the the city. Another applicant applied to open a church in the same location. The issue was which of the two had won the race to city hall to file first. The city accepted and approved the application of the church. Plaintiff alleged that city employees had actively sought to interfere to give the church priority and rejected plaintiff's original application to give the church more time to file.
- Petitioner sought writ of mandate compelling the DMV to set aside its suspension of his driver's license for driving with a blood-alcohol concentration at or above 0.08. Petitioner argued that his initial test of 0.084 percent 25 minutes after he was stopped made it likely that his blood-alcohol level was below 0.08 percent when he was driving, and therefore the DMV lacked a basis to suspend his license.
- Two administrative mandamus proceedings seeking to overturn a ruling by the California New Motor Vehicle Board concerning recreational vehicle franchises. The first involved modifications of a franchise, the establishment of a competing franchise within the relevant marketing area of a specific dealership, and alleged violations of warranty reimbursement and sales incentive obligations at three separate dealerships. In the second, the dealership challenged the Board's decision to overrule its protests that manufacturer improperly terminated two franchises.
- Medical marijuana dispensary cases. In numerous cases, plaintiffs separately challenged various city ordinances banning the operation of dispensaries within city limits. Plaintiffs asserted that the passage of the Compassionate Use Act, Proposition 215, gave them the absolute right to conduct their businesses anywhere in the State of California. The cities maintained that their authority over land use decisions and police power provided sufficient authority to ban or limit the sale of medical marijuana within their city borders.
- Regional joint powers transportation authority sued member city for failing to make required contribution of money derived from added building fees imposed specifically to abate transportation issues. City argued that its own transportation and road work done exclusively within its city limits constituted an in-kind contribution that exempted it from its financial obligation. Since all of its neighboring cities had imposed the required added building fees while defendant city did not, it acquired a competitive edge with lower cost building opportunities for developers.



- Defendant had been appointed as a referee by the Riverside County Superior Court to assist the court in arranging for the sale of real property that was then the subject of a partition action between plaintiff and a partner. The Riverside Court granted a motion to approve the sale of the property and approved the referee's final accounting and proposed distribution and authorized his discharge. Subsequently, plaintiff sued defendant referee in OCSC alleging fraud and conspiracy to commit fraud.
- City sued massage establishment defendant to abate a public nuisance, in this case prostitution. Undercover police officers had visited on several occasions and were solicited by massage technicians.
- Petitioner sought a writ of mandate to set aside the award of a building contract by an Orange County high school district to a competitor. Petitioner argued that the competition's bid was not responsive, and that the district abused its discretion by accepting the bid.
- Plaintiff filed a complaint against defendant city seeking to rescind a settlement agreement entered four years earlier on the ground it was entered under duress. The complaint included a prayer for the return of money paid by plaintiffs to the city under the agreement. City asserted that plaintiff had failed to comply with the claims presentation requirement of the Tort Claims Act (Gov. Code sec. 900 et seq.) before filing the complaint. Plaintiff argued the claims presentation requirements of the Act are inapplicable to claims arising from a contract.

## **INSURANCE COVERAGE**

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- Plaintiff insurance company issued commercial general liability insurance policies to defendant licensed general contractor. Plaintiff sought a declaration of its right and duties under the policies. This lawsuit was a corollary to construction defect litigation arising out of the construction of a building in central California where defendant was the general contractor. Several years after completion of construction, the owner of the building sued the general contractor for breach of the construction contract and negligence based on claims that the flooring had failed. Evidence showed that the most likely cause of the flooring failure were that flooring tiles had been installed on top of a concrete slab that emitted moisture vapor in excess of specifications. Evidence also showed that defendant general contractor knew of the excessive moisture vapor emission, yet had directed the flooring subcontractor to install the flooring anyway. Plaintiff filed this action seeking a declaration that it had no duty under the policies to defend or indemnify defendant in-as-much as the flooring failure was not a compared occurrence because it was not the result of an accident.
- Plaintiffs attempted a remodel of a newly-purchased house. Before construction was finished, city building inspectors discovered the project did not conform to city floodplain regulations and ordered the property demolished. Plaintiffs made a claim on their homeowners insurance policy. Defendant insurance company denied the claim, asserting that the demolition was not an accidental loss, and in any event, the loss was excluded by a provision in their policy stating there is no coverage for loss caused by the enforcement of any law or ordinance.

- Plaintiffs' father enrolled as member of a health plan for seniors, which agreed to provide him with all of the services to which he was entitled under Medicare. Defendant contracted with physicians to secure their services and, in turn, contracted with the health plan to provide all physician services to enrollees plus "utilization review" in with requests for authorization for medical services of any kind are reviewed to determine medical appropriateness. After father underwent surgery to repair a broken leg, he went to a nursing facility operated by a co-defendant. Plaintiffs alleged that the nursing facility failed to provide adequate care to father, causing him to suffer from starvation, dehydration and infections, as well as emotional distress ultimately resulting in his death. Plaintiffs alleged that defendant's receipt of a fixed or periodic fee for services and its participation in a risk sharing agreement that gave it a portion of any savings resulting from the denial of reasonably necessary medical care affected its decisions concerning fathers's health care. Defendant alleged pre-emption under the Medicare Act, specifically 42 USC section 1395w-26(b)(3).
- Water flooded into the crawlspace under plaintiff's house after a water pipe beneath her house burst. Homeowner's insurance policy did not provide coverage for damages due to general deterioration of the house (i.e., wear and tear) and did not cover damages from soil subsidence or erosion. Defendant insurance company determined that the water pipe broke due to general deterioration and was therefore not covered, but most of the structural damage was covered by her policy. Over the course of two years, insurance company paid plaintiff over \$225k on her claims relating to the water loss. Plaintiff paid for initial emergency work, but never paid for any other work and failed to contract to remediate subsidence issues that were not covered under the terms of the policy. Despite taking the insurance company payments, plaintiff argued that the insurance company was obligated to hire and pay for all remediation work, and she alleged causes of action for breach of contract and insurance bad faith.
- Five years after plaintiffs noticed deterioration in their expensive custom windows, they discovered that the damage might be insured under their homeowner's policy. Plaintiffs' claim was denied as untimely. Plaintiffs sued for breach of contract and for bad faith.
- Equitable indemnity action in which three insurance carriers sued a fourth insurer after settling a construction defect action on behalf of a mutual insured. Issues regarding fourth insurer's "other insurance" clause as to whether the fourth insurer was liable to share the loss on a pro rate basis.
- Plaintiff HOA sued defendant insurance company for allegedly failing to promptly investigate and respond to a request that it provide a defense in a pending lawsuit and by eventually denying coverage existed for the claim. In light of coverage by a second insurer, the issue was whether plaintiff had supportable damages for breach of contract or breach of the covenant of GFFD.

- An injured employee obtained a 10% increase in her workers' compensation award under Labor Code section 5814 because her self-insured employer unreasonably delayed or refused payment of benefits. The employer's excess insurance carrier sought a judgment declaring it was not required to reimburse the employer for the 10% increase because the policy excluded indemnification for payments made in excess of "benefits regularly required by the Workers compensation Law" if such benefits were required because "the Insured violated or failed to comply with any Workers Compensation Law." The employer contended the exclusion did not apply to section 5814 benefits and the exclusion was too ambiguous and overlord to be enforceable.

## **LEGAL MALPRACTICE**

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- Certified bankruptcy specialist was alleged to have acted below the standard of care when he advised corporate contracting company to file, and then did file for bankruptcy on behalf of the contractor. The primary source of business for the plaintiff contractor was from governmental entities. All contracts in existence were automatically terminated under the terms of the contracts, and all prospective contracts were lost. Moreover, all of the contractor's insurance policies were similarly cancelled. Plaintiffs alleged that defendant attorney failed to anticipate the ramifications of the bankruptcy filing, failed to properly advise as to potential issues, and should have advised to find other solutions to cash flow problems.
- Orange County law firm was sued for failure to file product liability action for defective seat belt that led to plaintiff's injuries.
- Plaintiffs alleged they hired defendants after a prior attorney failed to adequately handle a case involving the land upon which plaintiffs operated their business. The underlying action involved three deceased, intestate co-owners of approximately 10% of the property. The prior attorney pursued an adverse possession claim which, according to plaintiffs, was baseless because tenants in common cannot generally obtain title against each other by adverse possession. Plaintiffs alleged they then sought defendants' legal advice. They alleged that competent counsel would have (1) dismissed the adverse possession suit; (2) open probate for the intestate owners and purchase the property from their heirs; (3) sue the first attorney for a refund of all legal fees paid; and (4) sue a third party for converting events and oil revenue. Instead, plaintiffs alleged defendants continued to litigate the adverse possession claim and another third party claim resulting in over \$150k of legal fees.
- Plaintiff sought damages for legal malpractice and negligent misrepresentation in her dissolution action. Defendants alleged that even had they obtained a better judgment, it still would have been uncollectible and plaintiff would have been in no better position.

- Plaintiff was severely injured in an automobile accident and was hospitalized at UCI Medical Center for almost a month. Through a “capper”, defendant lawyers became aware of plaintiff’s injuries and, representing that they worked for UCI and collected money on UCI’s behalf, they solicited plaintiff’s relatives for the purpose of obtaining consent to represent plaintiff. Five months later, plaintiff and defendant signed a legal services agreement. Subsequently, defendant settled plaintiff’s claim against the responsible party in the automobile accident. Plaintiff’s first cause of action alleged that defendant breached the agreement by failing to competently perform services by failing to attempt to negotiate a reduction on plaintiff’s medical expenses, failing to set up a special need trust, failing to file a claim against UCI, and compromising plaintiff’s eligibility for government assistance. In the fraud cause of action, plaintiff claimed that defendant induced her to enter into the agreement by knowingly making false representations that they worked for UCI and would act in her best interests, and intentionally concealed the employment of a capper. Plaintiff also alleged causes of action for professional negligence, rescission of the agreement, and unfair business practices based on the use of a capper.

## **MEDICAL MALPRACTICE**

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- In an action filed eight years after birth, obstetrics physicians were alleged to have acted negligently in the delivery and care of a newborn with severe cerebral palsy. Mother had virtually no prenatal care and questions about her nutrition during pregnancy. Issues addressed included concern over the doctors’ absence during prolonged labor, incomplete or lackadaisical recordkeeping, and the failure of memory over such a long period before filing of lawsuit.
- Angiogram goes awry when j-wire misdirects into the renal artery. Plaintiff alleged that the j-wire was driven with such force that it punctured the through the kidney, leading to failure of both kidneys and permanent dialysis. Defendant agreed that the j-wire misdirected into the renal artery but disputed any kidney puncture, and testified that the renal artery was so sclerotic that the retraction of the j-wire incised and caused a rupture of the artery - a risk that was within the standard of care for this procedure.
- Podiatrist performed toe implant and bone reduction to allow plaintiff to continue distance running. The result was not satisfactory to plaintiff who alleged that defendant employed an experimental procedure without sufficient informed consent.
- Plaintiff received epidural injection at surgical center to ease long-running back pain. Plaintiff awoke from procedure with headache, foot and leg pain, and bruising. Plaintiff sued only the surgical center, not the doctors who performed the procedure. The issue was whether the surgical center breached the standard for care for this procedure.

- Plaintiff filed a wrongful death medical malpractice complaint alleging defendants negligently caused the death of her father. The decedent, aged 80, was diagnosed with bladder cancer, specifically invasive papillary transitional cell carcinoma, in 2009. He initially refused conventional cancer treatment, but in 2010 underwent a cystoscopy, a transurethral resection, a bladder biopsy; and a month later a cystectomy. Pathology confirmed invasive, high grade, poorly differentiated urothelial carcinoma and prostatic adenocarcinoma. He underwent a course of chemo in 2011, but side effects precluded continued treatment. Thereafter he elected to continue holistic treatment. With worsening symptoms, a liver biopsy revealed metastatic carcinoma, and an abdominal CT scan revealed multiple metastatic lesions. The decedent was readmitted to the hospital in July of 2011 with a palliative physician indicating that he was at high risk of end stage wasting disorder. The family agreed to a “do not resuscitate” order and hospice. He was transitioned to a skilled nursing facility under hospice care and died July 31, 2011. The autopsy confirmed widely metastatic carcinoma with tumors embedded within numerous organs, including the kidneys, liver, lungs, pancreas, and extensive lymph node involvement. Plaintiff argued that the biopsy caused the spread of the cancer and caused her father’s death.

## **PERSONAL INJURY AND PRODUCT LIABILITY**

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- Plaintiff approached defendant’s front door for a business visit. A screen door also covered the front door. When defendant opened the door, his dog was barking at plaintiff. Plaintiff, still behind the screen door, bent down to allow the dog to smell his hand through the screen. The dog managed to come through the screen door and bit plaintiff on the right side of his face. Plaintiff was treated with twenty-eight stitches and scar-reducing injections. Plaintiff sued for negligence, battery, and premises liability, and sought compensatory and punitive damages.
- While a middle school student, plaintiff allegedly was molested by one of his teachers. Plaintiff’s lawsuit alleged a single cause of action against defendant school district for breach of duty to properly and adequately investigate, hire, train, and supervise the teacher. District alleged that at the time of hire, there was no evidence that the teacher posed a foreseeable risk of harm to his students, and there was no evidence that the district was aware of any contacts between plaintiff and the teacher.
- Plaintiff housesitter slipped on slate border to sloping driveway at defendant’s home. She suffered fractured right ankle, torn ligament and related tissue damage, claiming medical damages exceeding \$50k and total damages in excess of \$500k. She asserted causes of action for general negligence and premises liability.
- Plaintiff was walking the deck of a cruise ship when she slipped and fell on a puddle of water that had formed on the ship’s deck, suffering damages.
- Plaintiff walked out of her mother’s room at a skilled nursing facility and slipped on a small puddle in a hallway, badly injuring her arm. Plaintiff alleged the nursing home allowed a dangerous condition to exist on the premises which caused her fall.

- Traffic accident in which defendant rear-ended plaintiffs' vehicle, injuring the father, the mother, and two teenaged children. The most significant injuries were to the 14-year-old girl who suffered neck and back pain. She also suffered a severe laceration to the bridge of her nose requiring 20 stitches and left a scar that made her very self-conscious.
- Plaintiff Harley-Davidson rider was stopped at a traffic signal on PCH when he was struck from behind at low speed by defendant. The motorcycle fell over injuring plaintiff's leg.
- Plaintiff motorcycle rider was in the carpool lane on the freeway driving in darkness with his lights on. He was following an Orange County Sheriff's Department jail bus returning prisoners to a jail facility. Plaintiff believed that the bus driver had pulled the bus to the left edge of the lane to allow him to pass the bus via lane sharing. As plaintiff pulled adjacent to the rear tires of the bus, it began to travel toward him as it returned to the center of the lane. The 3" lug nuts created a buzz saw that struck his left foot and amputated two toes and broke several of the bones of that foot. Plaintiff drove home and got family members to drive him to the hospital for treatment. Plaintiff alleged negligence on the part of the deputy sheriff bus driver and the County.
- Plaintiff, a competitive bicycle rider, was completing a training ride in Huntington Beach on a roadway with heavy traffic. In riding close to the curbside, plaintiff encountered a steel grate placed to allow runoff water into the drainage system. Plaintiff's front tire fell between the steel grate members and plaintiff was thrown from the bicycle sustaining major injuries.
- Plaintiffs, mother and daughter, obtained a ride in the vehicle of an acquaintance traveling to a local event. Defendant owner and driver of that vehicle rear-ended another vehicle. Plaintiffs alleged significant head, back and neck injuries. Plaintiff mother alleged that her atlas was fractured as a result of the accident, effectively resulting in a broken neck, and her expert testified accordingly. Defense expert testified that what was shown by the x-rays and MRI was a congenital birth defect, not a fracture.
- Plaintiff was a 21-year-old woman who was running late for a medical appointment and was unsure of the location of the doctor's office. Plaintiff arrived at a stop sign and came to a complete stop. Traffic on the crossing street had no signal or stop sign and that street's speed limit was 40 mph. Plaintiff turned left onto the cross street and was immediately hit head on by a large van traveling at 43 mph to 52 mph (depending on which expert was to be believed). The force of the collision drove plaintiff's vehicle back 150 feet and caused plaintiff's aorta to rupture ultimately rendering plaintiff a paraplegic. Plaintiff alleged negligence due to the excess speed of defendant's vehicle.
- Defendant, a scuba diving instructor, performed manipulations on the back of one his students, plaintiff, outside of the scuba class. Two and a half months later, plaintiff suffered a severe disk extrusion causing her severe pain and requiring surgery. Plaintiff alleged defendant's manipulations caused her back injury.
- Plaintiff, a medical doctor with a significant practice treating AIDS patients, sued former friend who, after a falling out, had gone on a campaign to destroy plaintiff's business. Defendant was alleged to have falsely claimed plaintiff was gay and had AIDS. Action for defamation.

- Product liability action involving an SUV roll-over after the driver lost control, ran up onto the center median, then “S-turned” into roll. The driver was killed on impact and passenger was badly injured.
- Plaintiff and defendant were both real estate brokers living and working in the same large condo complex. Plaintiff alleged that Defendant defamed plaintiff and plaintiff’s business to gain a business advantage.
- Defamation claim wherein the operators and employees of a wedding cruise boat in Newport Harbor were alleged to have gone online and anonymously posted negative reviews and comments about competitor boat.

## **PROBATE**

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- Petitioners, all children of deceased trustor, alleged that sibling respondent engaged in a pattern of undue influence to procure a pour-over will and trust in which respondent was the sole beneficiary. Respondent, a man in his 50s, had lived with his mother, the trustor, for many years while unemployed and utilizing mom’s credit cards. Petitioners alleged that respondent had systematically denied them access to their mother as her health was failing, and around that time respondent took his mother to an attorney to prepare a new will and trust. That attorney was deceased by the date of trial and unavailable to testify as to the circumstances or capacity of the trustor.
- Competing petitions for conservatorship of elderly bedridden woman. The first petition was filed by the OC Public Guardian per police and hospital referral; the second by her unemployed adult son who had been living with the proposed conservatee for some time and was believed to have assaulted her. The court-appointed attorney for proposed conservatee waived jury and urged the court to appoint the public guardian.
- An aging bank executive with a \$6 million estate who was widowed in middle-age with four children, remarried and had two more children with his second wife. Now retired, the bank executive asked one of his children by his second marriage to serve as his trustee. That child had proposed his father invest in his start-up business, a request which was declined by the father. A new trust is established with the requested son as trustee and funded with trustor’s assets. Son, as trustee, then invested \$4 million of trust assets in his own start-up business which shortly thereafter failed, losing all of the trust’s invested money. Most of the children from the first marriage petition for an accounting and surcharge for the lost funds. Trustee/son alleged that he acted at the direction of the trustor.
- Complex conservatorship and multiple trust issues. Extremely successful businessman established spousal trusts funded with respective community assets with millions in each trust. His wife died and within months he meets and marries his second wife. Within two years, the businessman’s mental capacity is failing and his second wife places him in a board and care facility. Counter-petitions for conservatorship are filed by his second wife and by his daughter from his first marriage. Daughter petitions for an accounting and alleged profligate spending by new wife. Wife alleged that most of her husband’s assets in his trust had been depleted. She petitioned to invade the principal of the trust of first wife.

- Two brothers are the sole survivors of their father. His will appointed one of the brothers to serve as executor and left his estate in equal shares to the brothers. Post distribution the executor claimed to have discovered a later dated will that left the entire estate to him and specifically excluded his brother. Action filed to recover the allegedly misdirected distribution.
- Plaintiff sued his brother alleging violation of defendant's fiduciary duties as trustee of a trust of which both were beneficiaries. The alleged breach of fiduciary duty included claims that defendant regularly withdrew money from a trust-related bank account for his own benefit, donated trust money to an educational institution for the benefit of his spouse, lifted money to non-beneficiaries, disbursed more money to his own children beneficiaries than to other equal beneficiaries, utilized trust money to renovate and repair a residence, and improperly sold trust-owned oil stocks. A handwritten trust addendum purportedly executed the day before the trustor suffered a stroke was also challenged.
- Dispute between decedent's daughter (trustee) and decedent's second wife (widow and executor). Widow claimed that decedent's daughter breached her fiduciary duty by paying estate taxes out of trust A, of which widow is the life beneficiary, rather than trust B, of which daughter is the beneficiary. Each party petitioned the court for declaratory relief, seeking a determination that certain proposed actions against the other would not violate the no-contest clauses in the will and trust.

## **Rates & Fee Schedule**

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## Hon. Franz E. Miller (Ret.)

### Case Manager

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## Biography

*Available to conduct virtual/remote mediations, arbitrations and other ADR proceedings on a variety of online platforms, including Zoom.*

**Hon. Franz E. Miller (Ret.)** joined JAMS after 16 years of service on the Orange County Superior Court. His tenure at the court was equally divided between the Family Law Panel and the Civil Law Panel, where he was supervising judge during the last two years of that assignment.

Judge Miller handled thousands of matters, tried more than 500 contested cases and settled many cases that were destined for trial. He served as settlement officer on highly contested matters. The superior court's settlement program afforded him the ability to focus on case dynamics and to resolve cases that might otherwise have moved on to lengthy, expensive trials.

Judge Miller came to the bench with vast and varied legal experience, including more than 13 years of litigation involving more than 30 jury trials and 13 years as a senior staff attorney at the Court of Appeal. He taught in local law schools as an adjunct professor for over 20 years.

During his legal career, Judge Miller was very active in the Orange County legal community, serving as president of the Orange County Bar Association in 1997, and in his local community, where he was a planning commissioner.

Judge Miller brings to JAMS his desire to resolve matters in the most efficient, cost-effective manner.

## ADR Experience and Qualifications

- 16 years on the Orange County Superior Court bench
- Handled thousands of matters and tried over 500 contested cases covering a wide array of civil and family law cases
- Served as settlement officer for the superior court's settlement program
- Frequent lecturer before numerous professional organizations on subjects including appellate advocacy, attorney competence and legal ethics, appellate practice, evidence, civil procedure and family law

## Representative Matters

### Family Law

#### Property Division

- Sophisticated property valuation of aging shopping center
- *Pereira/Van Camp* issue involving elderly litigants where employed spouse stayed on as titular executive of iron plant for many years
- Complex valuation of future stock options for property division
- Extensive expert and lay testimony regarding fraud and breach of fiduciary duty regarding marital assets by financial planner spouse

#### Support/Determination of Income

- Characterization of "roommate's share of rent" as income to lessee (published Court of Appeal opinion)
- Appropriate amount of child support in extremely high earner case (as Court of Appeal senior staff attorney)
- Numerous cases involving determination of self-employment income

#### Date of Separation

- Date of separation involving couple who lived in separate countries a significant amount of time
- Date of separation involving couple who lived separately in same house for a number of years

#### Custody/Visitation

- Multiple cases involving the reunification of children with substance abusing parents
- Highly contested custody/visitation matter involving couple who often moved to different states and countries
- Complex custody/visitation alienation case involving case manager professional and three adolescent children whose alliances were split
- Highly contested custody/visitation issue regarding high-risk child with cystic fibrosis and involving significant interaction with minor's counsel
- Appropriate custody/visitation plan for former professional athlete with substance abuse issues involving long-distance move-away
- Reunification of alienated parent and child in seemingly intractable dispute

#### Other Family Law Issues

- Dissolution between two major entertainment celebrities with personal jurisdiction and default issues
- Validity/impact of foreign divorce decree involving determination of foreign court's jurisdiction
- Competency of elderly, highly educated spouse to dissolve marriage
- Highly contested dissolution involving scion of a major real estate development family
- Complex issues regarding transfer of assets and income earned in foreign country
- Interpretation and impact of parties' trust agreement language pertaining to duration of marriage (published Court of Appeal opinion)
- Extensive evidence regarding transfer of funds to and in a foreign country
- Alleged misappropriation of marital funds and transfer to children of prior marriage
- Multistate litigation regarding alleged domestic violence by maternal grandfather on children of marriage with estrangement issues

## **Civil**

### **Business/Commercial**

- Breach of agreement for purchase-sale of multi-million-dollar environmental business
- Breach of commercial contract between local professional sports team and longtime sponsor
- Action between foreign bank and local company involving fraud and successor liability issues
- Major environmental issues regarding gasoline plume migration impacting lease/sale option for commercial property
- Breach of contract/fraud action regarding sale of luxury/specialty automobile business
- Action for non-payment of commission for sale of south Orange County golf course
- Action between major county hospital and emergency transport service over payment of fees per contract; substantial contractual interpretation issues
- Action between former sports star franchisee against major local restaurant chain regarding discount card use
- Multi-party multi-phase action regarding ownership and profits of strip club
- Multiple causes of action involving Vietnamese seafood importing business
- Fraud case involving millions of dollars in gold coins
- Partner of multi-manufacturer dealership business defrauded widow of former partner; substantial punitive damages award

### **Construction**

- Five-and-a-half-month trial of general contractor's multi-million-dollar suit against multiple subcontractors involving multiple school projects
- Action between general contractor and subcontractor regarding installation of industrial printing machines

### **Employment**

- Protracted collective bargaining dispute between county and sheriff's department
- Wrongful termination action between famous, highly successful entrepreneur and his organizer/coordinator; issue regarding whether termination involved her testimony in a grand jury proceeding against the entrepreneur
- Wage and hour action involving car wash employees
- Wage and hour action relating to ostensible carpet cleaning independent contractor
- Action between former sheriff's deputy and county involving alleged wrongful discharge; many writs and appeals involved, as well as POBRA issues

### **Personal Injury**

- Personal injury action against sushi restaurant arising from sale of raw river crabs resulting in substantial and continuing ill health
- Action by daughter of decedent for elder abuse and related causes of action arising from substandard assisted living care; substantial punitive damages award
- Products liability action against major tire maker involving significant foreign discovery issues
- Fall by disabled person in restroom at Major League Baseball stadium
- Fall over waiting line rope at major amusement park

## **Professional Liability**

- Legal malpractice action arising from usurious loan transaction with attorney conflict-of-interest issues

## **Real Property**

- Lease dispute between major local sports team and city-owned stadium involving parking that raised significant issue regarding property versus contract aspects of the lease (as Court of Appeal senior staff attorney)
- Homeowners' association action against wealthy homeowners for multiple CC&Rs violations
- Action between wealthy neighbors concerning landscaping and construction incursions
- Action by homeowners' association in affluent beach community for unauthorized construction that impinged on neighbor's right to privacy
- Prescriptive easement issue involving side yard in high-density housing development
- Action between land developer and county over tax assessment of undeveloped commercial property
- Breach of commercial lease on large property with cross-complaint for wrongful eviction
- Multiple causes of action arising from habitability/retaliatory eviction issues

## **Other Civil Matters**

- Settled a longstanding dispute between pro-life advocates and a local college district regarding a workable program to balance the advocates' free speech rights and the district's logistical issues
- Action and cross-actions involving members of Muslim organization's governing board
- Civil injunction against massage parlor for alleged acts of prostitution
- Mandate action by unified high school district involving decision by professional competence commission regarding commission's declination to discipline teacher
- Action pertaining to artist excluded from major art festival
- Civil ADA action relating to placement of gas pump card readers

# **Honors, Memberships, and Professional Activities**

## **Memberships and Affiliations**

- Orange County Superior Court
  - Executive Committee, 2004–2008, 2012, 2016–2017
  - Served on numerous committees, including Finance Committee, Temporary Judge Committee, Strategic Planning Team, Judicial Education Committee, Legal Resources Committee, Connecting With Constituencies Committee
- Orange County Bar Association
  - President, 1997–1998
  - Executive Committee, 1994–1998
  - Director, 1990–1993
- Member, Master Benchers, Robert Banyard Inn of Court, 1999–Present
  - Board Member, 2004–2010
  - President, 2006–2008

- Director, Charitable Fund, Orange County Bar Association, 1999–2002
- California Judicial Council
- Ethics and Fairness Curriculum Committee, California Center for Judicial Education and Research, 2010–2016
- Task Force on Public Information and Education, Commission for Impartial Courts, 2007–2009
- Access and Fairness Advisory Committee, 2003–2009
- President, Board of Trustees, Orange County Law Library, 2001–2002
- Director, Orange County Bar Foundation, 1994
- Director, Public Law Center, 1994
- Member of numerous bar associations, including Association of Business Trial Lawyers, Orange County Women Lawyers Association, Celtic Bar Association, Orange County Asian American Bar Association, Hispanic Bar Association of Orange County, Orange County Trial Lawyers Association

### Select Awards and Honors

- Judge of the Year, Orange County Asian American Bar Association, 2013
- Judicial Excellence Award, Orange County Trial Lawyers Association, 2012
- Judicial Civility Award, Robert Banyard Inn of Court, 2012
- Judge of the Year, Orange County Women Lawyers Association, 2012
- Judge of the Year, Celtic Bar Association, 2006
- Judge of the Year, Hispanic Bar Association of Orange County, 2004
- Attorney of the Year, Orange County Women Lawyers, 2001

### Background and Education

- Judge, Orange County Superior Court, 2002–2019
  - Family Law Panel, 2002–2007, 2015–2019
  - Unlimited Civil Panel, 2007–2015
    - Supervising Judge, 2014–2015
- Senior Staff Attorney, Court of Appeal, 1989–2002
- Adjunct Professor of Law
  - Whittier Law School, 1997–2013
  - Chapman University School of Law, 1996–1997
  - Western State University College of Law, 1991–1996
- City of Yorba Linda
  - Planning Commissioner, 1989–1994 (Chair, 1992–1993)
  - Parks and Recreation Commissioner, 1984–1989
- Attorney, Private Practice, 1983–1989
- Attorney, Orange County Deputy Public Defender, 1976–1983
- J.D., University of California, Los Angeles School of Law, 1974
- B.A., University of California, Los Angeles, 1971

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# Jill R. Sperber, Esq.



Results Beyond Dispute<sup>SM</sup>

For the last several years, Jill Sperber has practiced full-time, as a neutral in the Irell & Manella Alternative Dispute Resolution Center headed by Former U.S. District Court Judge Layn R. Phillips. During this time she served as a mediator, arbitrator, co-mediator and liaison on several arbitration panels. She has played an integral role in the resolution of more than five hundred disputes with settlements ranging from five to ten figures. Relying heavily on her business and legal acumen, she can facilitate creative and equitable resolutions, often restoring the parties' confidence and saving future business relationships. Prior to her work as a neutral, Ms. Sperber litigated high-stakes, complex business disputes for nearly a decade with Cleary Gottlieb Steen & Hamilton and then later with Irell & Manella. Consequently, she appreciates the costs, risks and potential rewards of trying cases. Moreover, having served as law clerk both at the District Court and Ninth Circuit, she is able to gauge how a fact-finder will likely respond to procedural, jurisdictional and factual issues. Her private dispute resolution experience encompasses a wide-variety of commercial disputes including anti-trust, class action, derivative, employment, multi-district litigation, intellectual property, insurance coverage, securities, subprime lending, real estate, and bet the company type matters. Through the use of pre-mediation phone calls and thorough preparation, Ms. Sperber makes sure that the parties get the most out of each session. If for some reason a settlement cannot be achieved in the short run, she tenaciously follows up with counsel and parties, monitors litigation developments, and continues to explore any and all settlement windows. Ms. Sperber commented, "Unlike the parties who have been living with these issues, as the neutral, I am just getting a glimpse into the dispute. As such, my preparation goes beyond review of the parties' submissions and typically includes pre-mediation conferences with counsel and the parties to ensure we all are best prepared for the mediation session."

## MEDIATION

This neutral is available only for cases involving Mediation

## LEGAL CAREER & PRIOR EXPERIENCE

- Neutral, Judicate West (Nationwide 2014-present)
- Neutral, Alternative Dispute Resolution Center, Irell & Manella, LLP (Newport Beach, 2010-2014).

## EDUCATION & PROFESSIONAL AFFILIATIONS

- J.D., Columbia Law School, Harlan Fiske Stone Scholar & Columbia Business Law Review (2000).
- B.A., University of North Carolina, Chapel Hill (1996).

## ADR EXPERIENCE & SPECIALTIES

Business/Commercial, Cannabis, Construction, Employment, Environmental, Insurance, Intellectual Property, Probate, Professional Malpractice, Real Estate , Tort

## ACHIEVEMENTS & AWARDS

- Social Justice Award, ACLU Foundation of Southern California (2010).

## HOBBIES & INTERESTS

Ms. Sperber enjoys spending time with her husband, two young children, and an active dog, as well as running, biking, hiking, and baking. She is proficient in Spanish.

## LOCATIONS

Orange County, Nationwide



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# Darrell P. White



## Darrell P. White

CALL ME: [\(949\) 783-9523](tel:9497839523)

## Practice Areas

- Complex Business Disputes
- Real Estate
- Financial Services
- Trial

## Biography



Mr. White is a business trial lawyer specializing in complex business disputes. His clients include large corporations and institutions generating billions in revenue annually, multinational corporations, and entrepreneurs. Throughout his career, he has worked with and against the largest law firms in the world. He prides himself on delivering top results and creating value for his clients, both large and small. In addition to litigation matters, Mr. White provides outside general counsel services to clients across the banking, entertainment, hospitality, manufacturing, construction, real estate, and restaurant industries.

Prior to joining the firm, Mr. White practiced with a large international law firm. There, he represented financial institutions in both state and federal courts in actions arising from the Federal Credit Reporting Act, Fair Debt Collection Practices Act, and other consumer financial regulations. In addition, Mr. White gained extensive experience representing financial institutions in mortgage and foreclosure litigation.

While at a mid-size, California based law firm, Mr. White also represented clients in Private Attorney General actions, Prop. 65 actions, qui tam matters, trade secret litigation, and shareholder derivative actions.

Notably, Mr. White's real estate experience includes representing manufactured housing community owners and operators in mass-plaintiff (i.e. failure to maintain), landlord-tenant, and operations related actions. He has also assisted manufactured housing community owners with various resident meetings by presenting informational seminars as well as conducting Park Rule and Regulations meetings.

# Education

- **Fowler School of Law, Chapman University**, Orange, California
  - J.D.
- **University of California, Los Angeles**
  - B.A.

# Honors

- Super Lawyers Magazine as a “Rising Star”- an honor reserved for the top 2.5% of lawyers in Southern California
- Southern California Super Lawyer Rising Star (2014 – Present)
- 2016 Neighborhood Hero Award presented by City of Santa Ana, ComLink
- 2016 – Moderator for Diversity Symposium, Chapman University School of Law

# Professional Associations

- Association of Business Trial Lawyers, Orange County, ABTL Report Editor (2020-Present), ABTL Asst. Editor (2017-2019)
- Orange County Bar Association, Board of Directors (2019-Present), Pro Bono Committee, Real Property Section, Business Litigation Section
- Orange County Hispanic Bar Association, Immediate Past President (2019), President (2018), President-Elect (2017), Board of Directors (2014-2019)
- American Bar Association, Section of Litigation, Liaison to the Commission on Hispanic Legal Rights and Responsibilities, (July 2016-Present)
- Hispanic 100, Mentor (2017-Present)
- Inn of Court, Member (2016)

## Current Employment Position

- Partner

## Published Works

- Quoted in Daily Journal "Seismic Shift: The loss of a child propelled Judge Andre De La Cruz to refocus his career on helping others." November 20, 2018. <https://t.co/7JeHGgUsm3>
- Ronald Hendry v. Bushnell Outdoor Products, Inc. et al., G054112 (Super. Ct. No. 30-2015-00805957) <https://www.courts.ca.gov/opinions/nonpub/G054112.PDF> (August 20, 2018)
- "Who's Who in the OCBA the Affiliate Bars," Orange County Lawyers magazine, an official publication of the Orange County Bar Association, (featured not authored) Vol. 60 No. 6., (June 2018)
- "Trying Your Case to the Millennial Generation" presented with Joshua M. Kimura to Hispanic Bar Association of Orange County, Barcelona, Spain CLE Trip (May 27, 2018)

- “Worker’s Compensation and Employment Law” webinar presentation, moderator (April 25, 2018)
- “Legal Updates for 2018” presented to franchisees of national fast-food chain headquartered in Irvine, CA (April 2018)
- “Brown, Groban Should be Commended,” Letter to the Editor, Daily Journal, Vol. 131, No. 46, (March 8, 2018)
- “Raising the Bar,” OCBJ, Philanthropy column, (featured not authored) Vol. 41, No. 14, (April 2, 2018)
- “President’s Message,” Orange County Hispanic Bar Association, Newsletter (monthly) (January 2018 – Present)
- “Using Demonstratives to Effectively Communicate Complex Business Cases to a Jury”, co-author with Sherry S. Bragg, Association of Business Trial Lawyers, ABTL Report, Volume XIX No. 2, (Summer 2017)
- Beachcomber Management Crystal Cove, LLC, et al., v. The Superior Court of Orange County et al., G054078 (Super. Ct. No. 30-2016-00839339)  
<https://www.courts.ca.gov/opinions/archive/G054078.PDF> (June 28, 2017) as covered by multiple media outlets including National Law Review: <https://www.natlawreview.com/article/california-court-appeal-holds-llc-s-former-counsel-may-represent-insider-defendants>

- “Advance Conflict Waivers and Disgorgement Under Sheppard Mullin Richter & Hampton LLP v. J-M Manufacturing” presented to Hispanic Bar Association of Orange County, Panama CLE Trip (May 29, 2016)
- Fowler (Chapman University) School of Law, Social Justice Symposium, Moderator (March 3, 2016) <http://tinyurl.com/jlbqo5p>

# Tell Us About Your Case

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While this website provides general information, it does not constitute legal advice. The best way to get guidance on your specific legal issue is to contact a lawyer. To schedule a meeting with an attorney, please call the firm or complete the intake form below.

Fields marked with an \* are required

Name \*