

WRITER'S CONTRACT

This Agreement is entered into and is effective as of the _____ day of _____ 2021 by and between the Orange County Bar Association ("OCBA") and the Author indicated below.

WHEREAS, the OCBA is the publisher of *Orange County Lawyer* (hereinafter sometimes referred to as "OCLM") and regularly seeks articles, letters to the editor, and other content to be published therein; and

WHEREAS, the Author has composed or will compose article(s), letter to the editor, or other content (the "Article") and desires the OCBA to consider the Article for publication in the *Orange County Lawyer*;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Author represents and warrants that the Article is an unpublished original Article created solely by the Author that has not been submitted to any third party for publication. Further, the Author represents and warrants that the Article does not infringe on any third-party copyright or any other property or legal rights of another, does not contain matter that is defamatory, and does not reproduce any textual or graphic material that is the property of another for the use of which permission is required.

2. The Author hereby grants to the OCBA a royalty-free, non-exclusive license to use, make, reproduce, distribute, perform, display and create derivative works from the Article, including translation(s) into other languages, in whole or in part, in any media now known or later developed, including in publications other than the *Orange County Lawyer* and in electronic databases, including those maintained by third-party providers of on-line legal information. The Author acknowledges that such grant includes the right to adapt, edit and revise the Article and the Author hereby authorizes such changes. In addition, the Author grants the OCBA the right to sublicense to third parties, including, without limitation, to LEXIS-NEXIS and Westlaw.

3. Title to, ownership of, and all rights and interest in the Article shall remain at all times vested in the Author. However, any re-printing of the Article as it appeared in the OCLM shall be governed by the guidelines set forth in Exhibit A, which is expressly incorporated herein and made a part hereof. The OCBA agrees not to raise, or cause to be raised, any questions concerning the validity of the intellectual property rights in the Article or any of the rights held by the Author therein. The OCBA further acknowledges and agrees that, except for the non-exclusive license granted in this Agreement, the OCBA shall acquire no right, title or interest in the Article.

4. The Author agrees to waive and release any claims the Author may have against the OCBA, or its respective licensees, successors and assigns, based on or arising from the use of the Article, including any claims for copyright infringement.

5. Notwithstanding the non-exclusive nature of the grant in paragraph 2, the OCBA shall have the right to first publication of the Article. The Author shall take no action which would hinder the OCBA's right to first publication. Should the OCBA fail to publish the Article within 4 months of the OCBA's receipt of the finalized Article, the Author may terminate this Agreement upon written notice to the Editor-in-Chief of the *Orange County Lawyer*.

6. The Author agrees to defend, indemnify and hold harmless the OCBA, its directors, officers, employees, agents, successors and assigns against any and all judgments, settlements, penalties, costs and expenses (including attorneys' fees) paid or incurred in connection with claims by any party which arise from the use of the Article under this Agreement, including, but not limited to, suits arising from claims of copyright infringement, libel, plagiarism, defamation, and legal malpractice, but excepting claims arising solely from the negligence or fault of the OCBA. The OCBA shall have the right, but not the obligation, to participate in responding to or defending against any such claim or suit arising therefrom. All costs, fees, expenses, damages, judgments or other liability incurred in connection with claims that arise solely from the negligence or fault of the OCBA shall be borne exclusively by the OCBA. In the event a claim is asserted against the OCBA as a result of the Author's alleged breach of this Agreement, the Author shall be promptly notified of same.

7. The OCBA shall have the right and authority to initiate and pursue legal proceedings (or not) against persons or entities believed to be infringing the rights granted by Author to the OCBA pursuant to this Agreement. Author agrees to cooperate reasonably in the institution and maintenance of such proceedings. Any damages recovered by the OCBA in such proceedings shall be applied first toward the OCBA's costs and expenses, and the balance shall be split between the Author and the Orange County Bar Association Charitable Fund.

8. Author understands, acknowledges and agrees that submission of the Article and execution of this Agreement does not guarantee publication in the *Orange County Lawyer* and that acceptance of the Article for publication is within the sole discretion of the OCBA. In addition, Author understands, acknowledges and agrees that due to space limitations or changes in the law, the Article may require rewrites. Moreover, the OCBA reserves the right to change the publication date at any time without providing notice to the Author.

9. Author agrees to allow the staff and editors of the OCLM to edit and revise the Article as OCLM deems reasonable and desirable in its sole discretion prior to publication in the OCLM. As a courtesy only, substantial alteration of the Article shall be subject to review and approval by the Author prior to publication. The OCLM shall have sole discretion to determine whether an edit constitutes a substantial alteration. Correction of typographical errors, formatting, grammatical changes, and all minor changes shall be made without Author permission. Author's refusal to allow suggested substantial alteration of the Article shall result in a rejection of the Article. Author knowingly and voluntarily waives all other remedies of any kind whatsoever arising from the rejection of the Article.

10. Upon execution, this Agreement together with Exhibits A and B, which are incorporated herein by reference as though set forth in full, shall constitute the complete, exclusive and final agreement between the OCBA, OCLM and Author with respect to the Article that is the subject of this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged and superseded by this Agreement.

11. Author agrees to submit the Article in Word format via electronic email attachment to the Editor-in-Chief of the *Orange County Lawyer*, Gialisa Gaffaney [email: gialisa@gmail.com].

12. In entering into this Agreement, neither party has relied upon any statement, representation or warranty, promise, or agreement of the other party, other than as expressly stated in this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or prior course of dealings, and no extrinsic evidence whatsoever may be introduced in a judicial proceeding, if any, involving this Agreement. Any amendment or modification of this Agreement must be in writing and signed by the parties hereto.

13. The parties represent and warrant that they have made no other agreement of any nature with any third party that would prevent them from entering into this Agreement, or that will or may impair the other party's rights hereunder.

14. This Agreement shall not be modified or amended in any respect except in a writing signed by both parties.

15. No act of any party shall be construed to be a waiver of any provision of this Agreement unless such waiver is in writing and signed by the other party. Any such waiver relating to one provision of this Agreement shall not constitute a waiver of any other provision. In the event one or more clauses is unenforceable as a matter of law, the remainder of the contract shall remain in effect.

16. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. In the event any legal action becomes necessary to enforce or interpret the terms of this Agreement, the parties agree that such action will be brought in the Superior Court of the State of California for the County of Orange, and the parties hereby submit to the jurisdiction of said court.

17. The persons signing this Agreement hereby warrant that they have, prior to signing, fully read and understood this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the date set forth above.

AUTHOR

Dated: _____

By: _____

Printed Name:

ORANGE COUNTY BAR ASSOCIATION

Dated: _____

By: _____

Gialisa Gaffaney
Editor-in-Chief of the *Orange County Lawyer*

EXHIBIT A

AUTHOR REPRINT PERMISSION

Any Reprint of the Article as it appeared in the OCLM shall be governed by these guidelines.

A) Author shall not alter the pagination, graphics, Cover or Table of Contents.

B) Any Reprint must contain first publication attribution (Title, Author, OCLM name, Month, Volume, Year, and first Number of first page are included).

C) The following must appear at the end of the byline: "The views expressed herein are those of the Author(s). They do not necessarily represent the views of the *Orange County Lawyer* magazine, the Orange County Bar Association, The Orange County Bar Association Charitable Fund, or their staffs, contributors, or advertisers. All legal and other issues must be independently researched."

D) If Work is changed, attribution must nevertheless be included, but prefaced by "substantial portions of this work appeared in the OCLM," including the citation set forth above at B. A substantially changed work need not mention the OCLM, but if it does, must indicate the work was substantially changed.

E) PDF files, or other hard copy format files which use OCLM graphics, in any way, for website and hard copy distribution and/or postings must be produced by the Orange County Bar Association. *See* Exhibit C.

F) Author(s) agree to make no other use of the article or images, except as to those expressly agreed to above.

G) Prior to printed distribution and/or website posting, Author(s) agree to allow the Orange County Bar Association, through its Editor-in-Chief or Managing Editor, a prior viewing to insure that all of these conditions are met.

H) In the event of website posting, hyperlink to "www.ocbar.org" is expressly prohibited, absent written waiver by the Executive Director of the OCBA.

Agreed to, in Orange County, California, by:

Author(s)

Date

EXHIBIT B

ARTICLE SUBMISSION GENERAL GUIDELINES

Submitted Articles shall be for the OCLM “Feature” section. Letters that are based on articles are also sometimes accepted.

All submitted Feature Articles should be educational in nature and can be tailored to the new practitioner or to the expert. Occasionally, Articles that include a call for pro bono or community service are accepted, although biographies, political pieces, editorials, interviews, and the like, are not accepted as a rule. While humorous Articles are sometimes accepted, to receive serious consideration, they should contain an educational component. All submissions should avoid bias of any kind (including but not limited to gender, religion, ethnicity, sexual orientation, etc.) and should adhere to the highest standards of the profession—both in content and tenor. While articles by non-lawyer experts are sometimes accepted, articles by law students are not. If the submitted Article concerns an obviously controversial issue, the OCLM reserves the right to offer the opposing viewpoint in that or the subsequent issue.

Citations should be within the article’s text, as footnotes generally are not permitted. *Formatting should avoid hidden commands (such as center, bold, underline), except that case citations should be italicized, and italics may be used for emphasis.* “Desktop publishing” should be avoided, as this is the role of the OCLM graphic designer.

Feature articles should be 750 words minimum. With certain exceptions, the typical Feature is 1,000—3,000 words in length. As a general rule, Letters should be limited to 250 words.

A byline, including name, firm (and optional email) must be included.

Articles must be submitted via electronic mail from the Author’s email address, in Word format, to the OCLM Editor-in-Chief, Gialisa Gaffaney [email: gialisa@gmail.com]. A final, polished, and complete work should be submitted, as author-initiated changes and additions are not permitted after submission. The Article shall be accompanied by the Writer’s Contract, signed by the Author, as well as signed copies of Exhibits A & B thereto. Articles will not be considered until the signed Writer’s Contract and its Exhibits are emailed to Ms. Gaffaney. The Author will be notified via electronic mail of either acceptance or rejection by electronic communication from the OCLM Editor-in-Chief within 10 days of his receipt of both signed documents and the Article. A rejection will include a full release from the Writer’s contracts. Authors should feel free to contact Editor-in-Chief Gialisa Gaffaney at gialisa@gmail.com to discuss any submission.

Agreed to, in Orange County, California, by:

Author(s)

Date

Exhibit C

Professional Reprinting of Articles Appearing in the *Orange County Lawyer* magazine

The Orange County Bar Association publishes *Orange County Lawyer* magazine each month, and also offers to each contributing author the service of converting their article into a PDF format version as it appeared in the magazine. For a fee of \$150, you will receive the file in 2 formats—a high resolution version for quality printing, and a low resolution version for email and web site posting. The Orange County Bar Association will remove any advertising that may have appeared within the body of the text and then re layout the article to fill in any gaps left by the ads.

Many of the writers in *Orange County Lawyer* magazine have used this reprint service to capture their article in an “as it appeared in the magazine” PDF, which they then can use in their marketing efforts. If you would like to take advantage of this offer, please contact the Orange County Bar Association directly with your request and approval of the \$150 fee. You can expect to receive your PDF files by email within two or three business days of receipt of payment.

Please contact:

Orange County Lawyer
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Email: oclawyer@ocbar.org