the Verdict

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Spring 2022

Alameda-Contra Costa
TRIAL LAWYERS' ASSOCIATION

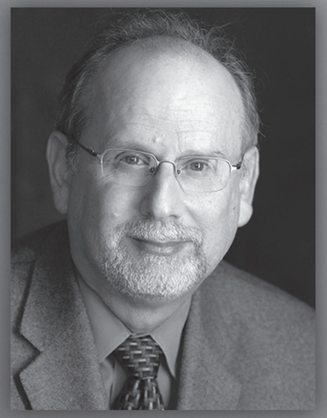


Hon. Benjamin T. Reyes II
Contra Costa County
Trial Judge of the Year

Hon. Evelio M. Grillo
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Charles Dell'Ario has been representing individuals and small businesses in the California and federal courts since 1974. Beginning in 1997, Mr. Dell'Ario has specialized in appellate matters and has participated in over 250 appeals in the California Courts of Appeal, Supreme Court of California, Ninth U.S. Circuit Court of Appeals and the United States Supreme Court.

Fighting the Good Fight for Plaintiffs

Despite the limitations created by the pandemic, I continue to fight successfully for tort plaintiffs in the appellate courts. In connection with my trial lawyers, ACCTLA-member Todd Walburg and co-counsel Celine Cutter, I established the duty of public agencies to maintain their streets and roads free of dangerous conditions that would increase the risks of recreational cycling. Our client was grievously injured when her bike struck a large pothole, throwing her to the pavement. The defendant argued she had assumed the risk of its bad roads. (Williams v. County of Sonoma (2020) 55 Cal.App. 125.)

Former ACCTLA and CAOC president Micha Liberty and I have teamed to fight the cause of school children victimized on account of their disabilities. The Supreme Court of California granted our petition for review and will decide the issue of first impression whether the state Unruh Act applies to the 7 million public school children. The high court only grants about 55 of the 3,500+ petition it received each year.

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— contents —

departments

4 From the Editors
Sonya Smallets & Sharon Vinick

6 From the President
Cat Cabalo

7 Sustaining Members

27 Calendar of Events

36 Member News

37 Dues Notice

features

8 Contra Costa County Trial Judge of the Year
Hon. Benjamin T. Reyes II
Scott J. Lantry

10 Alameda County Trial Judge of the Year
Hon. Evelio M. Grillo
interviewed by Sonya Smallets

14 Judge H. Glenn Kim
interviewed by Tiega Varlak

18 Judge Stephanie K. Sato
interviewed by Winston Moody

20 Judges' Night Photos
Oasii Photography

24 Judge Jennifer Lee
interviewed by Alison M. Karp

28 Judge Peter E. Borkon
interviewed by Winston W. Moody

30 ACCTLA Takes Steps to Promote Diversity in the Bay Area Legal Community
Megan Burns

32 How to Win on Course and Scope
Valerie T. McGinty

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Take advantage of ACCTLA's Mentoring Program to improve the quality of litigation in our courts. Attorneys who call will be referred to a mentor attorney for a free consultation. The mentor will not prepare your case but will assist you in your approach to the case.

This program is not just for newer attorneys, but also is available for seasoned practitioners who run into problems or simply want to bounce ideas off another seasoned practitioner. The mentors — who are all ACCTLA members — have varied degrees of experience in varied areas of the law, and can address your concerns regarding proposed instructions, or questions involving any of the earlier stages of litigation.

For further information, please contact:

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from the editors


Sonya Smallets


Sharon Vinick

Over the last two years, millions of words have been written about the devastating effects of the global pandemic. For litigators, the pandemic has resulted in the lengthy delays in getting cases to trial due to court closures, lack of technology in the courthouses, and lack of judicial resources. Despite the real challenges faced by the judiciary, the last two years has seen a remarkable group of talented attorneys take the bench in Alameda and Contra Costa Counties.

This issue of *The Verdict* introduces some of these remarkable new judges — Peter Borkon, Kelli Evans, Glenn Kim, Jennifer Lee and Stephanie Sato. And, this issue celebrates two seasoned jurists — Judges Evelio Grillo and Benjamin Reyes II — who we were able to honor as Judge of the Year at an "in person event"(!) in the beautiful Oakland Rotunda. As you'll see from the pictures in this issue, people were delighted to gather together, catch up, share stories and simply enjoy the company of our friends and colleagues.

This issue also introduces the first recipients of the ACCTLA Diversity Scholarship, which was awarded to four remarkable law students who plan to practice family, employment or criminal law in Alameda and/or Contra Costa Counties. These budding lawyers exemplify the qualities that many of us hold dear — commitment to equality and a passion for justice.

As we move towards the "new normal," there will be numerous changes that will impact our work as lawyers. In the coming issues, we hope to provide you with some insights into the practice of law in the post-pandemic world. But, for a moment, let's celebrate our wonderful jurists, our scholarship recipients and being able to gather together. ◆

— Sharon Vinick represents plaintiffs in employment lawsuits, including cases alleging discrimination, harassment, wrongful termination and breach of contract. She jokingly refers to herself as the "champion of the cheerleaders" due to her representation of the Oakland Raiderettes in a wage theft case. She is a partner at Levy Vinick Burrell Hyams LLP, one of the largest women-owned plaintiffs' employment firms in California and can be reached at sharon@levyvinick.com.

— Sonya Smallets, a partner at Minnis & Smallets, has been representing employees who have been discriminated against, harassed, or wrongfully terminated by their employers for more than 15 years. She recently won the San Francisco Trial Lawyers Association Trial Lawyer of the Year Award in for her verdict in a gender harassment case. She can be reached at sonya@minnisandsmallets.com.

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THE Verdict
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- Since 1970 -

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Cat Cabalo

Friends and Colleagues,

I want to thank all of you for being supportive and welcoming as I begin my presidency. I am particularly grateful that my friend, colleague, and former boss, Paul Rein, signed me up as an ACCTLA member when I moved to the Bay Area to join his firm in 2009. Prior to joining Paul's firm, my practice in Seattle was focused on insurance defense and construction defect defense. It felt good returning to the plaintiff's bar and being welcomed by such a lively and active group as ACCTLA. Paul invited me as his guest to several board meetings, and the rest is history. I look forward to serving as your president and helping make our organization better, especially as we navigate how to litigate in these interesting times.

Postponing Judges' Night to March was perfectly timed to wait out the omicron surge and allow me to attend a gathering for the first time since 2020. After two years of interacting with people using various rectangles, I was ready to attend an event live. However, as I mentioned in my welcoming remarks at Judges' Night, I feel that I have lost the ability to socialize in person competently. Engaging in conversation and socializing in person are skills that must be exercised regularly to remain proficient, and we all have been deprived of the opportunity to do so for too long. I am ready to regain some semblance of normalcy so we can get back to what our organization does best — brainstorm legal ideas, plan great events, network, and support each other generally — all of which are much easier and more fun to do in person.

I'm thrilled this edition of *The Verdict* is devoted to new judges and our Judges of the Year. As we all do our best to get back on our feet and in the courtroom, we must continue to work with our judges to improve our practices and court processes, ensuring that we learn from the lessons that were forced upon us by COVID and the technology that has allowed us to continue litigating. I am excited for what the future holds and hope the changes we will see moving forward will make us more efficient and successful in our practices, providing for better access to justice. I also hope the increasing diversity on the bench and in our organization continues.

Many thanks to our editors, Sonya Smallets and Sharon Vinick, for a wonderful edition of *The Verdict!* ◆

— Cat Cabalo is a partner with Peiffer Wolf Carr Kane Conway & Wise and is based in the San Francisco office. Her practice is focused on disability rights. She has handled a variety of federal and state cases in California and Washington state, seeing several through trial and appeal, including in the Ninth Circuit Court of Appeals and the Washington State Supreme Court. She was also the co-editor of this magazine in 2018.

Would you like to be published?

Publication in **The Verdict** is excellent exposure. Our readers are most interested in issues surrounding plaintiffs' personal injury, family, appellate, criminal and/or business law.

If you're interested in submitting an article, please contact:

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See page 37 for the Dues Notice or call Mariana Harris, 925.257.4214

Contra Costa County Trial Judge of the Year

Hon. Benjamin T. Reyes II

by Scott J. Lantry



"If men were angels, no government would be necessary.
If angels were to govern men, neither external nor internal controls on government would be necessary.…
[T]he great difficulty lies in this: you must first enable the government to control the governed;
and in the next place oblige it to control itself."
- James Madison, Federalist No. 51.

Consider this thought. **Judge Benjamin Reyes II** — like every other Superior Court judge in the state — sits in judgment over other people.

Yes, Judge Reyes — like any judge — is constrained in that power. Judicial discretion must be applied along legal lines. Judges are bound by our constitutions. They take an oath to apply our law to the facts, uninfluenced by passion, bias or prejudice. Judges complete rigorous vetting before they assume the bench. And once they do, they are subject to draconian rules that apply even in their private lives. These are perhaps some of the "control[s]" over government that James Madison had in mind.

But, even still, our judges are humans. Not angels. And they are empowered by their office to make the most impactful decisions affecting their fellow humans.

Judges must, I suppose, face strong temptations. Perhaps the press of court business distracts them from reading all those motions on calendar. Maybe the fatigue of an extraordinary work regimen encourages expediency over careful attention. Possibly the passions that trials inevitably elicit unduly influence a Judge's thinking.

Never. At least never in Judge Reyes' courtroom. The litigants who appear before him never see a judicial officer who is unduly swayed by bias, or distracted from a dispassionate application of law to fact. They never see a Judge who has not absorbed the papers in preparation for the day's business. And they never see a Judge who is discourteous, abrupt, arrogant or inattentive. Judge Reyes embodies the opposite of all those things.

This is particularly revealing about Judge Reyes when you consider this fact: he has spent the past several years hearing only family law cases. If any assignment typifies those pressures and temptations, it must be family law.

Why does Judge Reyes model the exemplary Judicial Officer? Perhaps because he devoted his career to the careful and thoughtful application of law to fact, to achieve substantial justice. Judge Reyes' remarks during the Judge's Night Gala included a citation (yes, in proper California Style Manual format) to *Bay Cities Paving & Trading v. City of San Leandro* (2014) 223 Cal.App.4th 1181. That case is a revealing example of a restrained yet effective government, of the kind James Madison would be proud.

The facts of the case tell a story about a city government that was faithful to the public trust, committed to equal opportunity, and free from even the appearance of corruption. The procedural posture and legal discussion tells a story about a different part of our government — the judiciary — that dispassionately applied the facts to the law, not simply to resolve a public contract bidding dispute, but to do so in conformance with our best traditions — with the rule of law and stare decisis winning out over favoritism, partisanship and bias.

Judge Reyes acted as counsel for the City of San Leandro in that case, and he prevailed both at the Superior Court and Court of Appeal levels (and the Cal Supremes declined review). And Judge Grillo — this year's recipient of Alameda Judge of the Year — was the trial judge in that case. His decision was affirmed on appeal.

To James Madison, I say: Judge Reyes typifies a judicial branch that controls both the governed and itself. Our system works. In no small measure, we have him to thank. ◆



— Scott J. Lantry is a Senior Associate with Whiting, Fallon, Ross & Abel, LLP and is admitted to practice before all state and federal courts in California. He exclusively practices family law and is committed to empowering his clients to resolve disputed issues on terms most favorable to the client and his/her children, either by mutual agreement, or by focused and efficient family court litigation.

FOOD From The BAR
MAY 1 – MAY 31



Food is a basic human right

Join members of the legal community to prevent summer hunger for children and their families.

accfb.org/FoodFromTheBar

ALAMEDA COUNTY COMMUNITY FOOD BANK

1 in 4 Alameda County residents experiences hunger.

"Hunger is not an issue of charity; it is an issue of justice"
– Jacques Diouf, Director-General of the United Nations' Food and Agriculture Organization

Alameda County Community Food Bank invites you to participate in its 7th Annual ***Food From The Bar*** from May 1–31, 2022.

Last year in Alameda County, our legal community helped raise enough funds to provide over 130,000 meals during their COVID-19 response. Now, as so many strive to recover from the economic impacts of the pandemic, it will take many months — even years for our neighbors to get back on their feet.

That's why this year, we are ***"raising the bar"…***

Join us to raise enough funds to provide 200,000 meals this summer!

• Sign up your team to host a Virtual Food Drive to help the Food Bank purchase our most needed food items: https://www.accfb.org/foodfromthebar/

• Sign up your team for a volunteer shift to sort fresh produce at the Food Bank: https://www.accfb.org/get-involved/volunteer/

• In the spirit of "friendly competition," you can compete for awards to be given in various categories from *Best First Time Participant* to *Most Meals Donated.*

To help ensure a more vibrant, healthy community in Alameda County, you can do good and have fun at the same time!

For more information and assistance to participate, please contact Katherine Avila at kavila@accfb.org.

Alameda County Trial Judge of the Year

Hon. Evelio M. Grillo

Interviewed by Sonya Smallets



Judge Grillo has served as a judge of the Alameda County Superior Court since November of 2003. Since then, he has presided over more than 200 jury and court trials in civil, criminal, and family law matters. His work in the civil law & motion and civil trial departments has resulted in more than 40 published opinions. Prior to joining the bench, he was a partner at Grillo & Stevens LLP in Oakland, where he represented municipalities, businesses, and individuals at the trial and appellate level, with an emphasis on civil rights, employment, and business torts. He earned a Bachelor of Arts in Political Science and a Masters of Public Policy from the University of California at Berkeley and J.D. from Harvard Law School. His hobbies include fly fishing, reading, and cooking; he has won the Alan Broussard Memorial Gumbo Cook-Off three times.

What's your favorite part about being a judge?
It's waking up in the morning and looking forward to going to work. There's a lot of helping profession in it. You're not doing social work or medicine, but you have people who are coming to the government looking for help, and while it's not the most user-friendly way of helping someone, it is a way of doing so. It's important to me that they feel they've been fairly treated by their government. There are a lot of faces of government, and we're probably the most important one that citizens come in contact with.

Did you always intend to be a judge?
No. I intended to be a lawyer. I never thought about being a judge.

What prompted you to change your career trajectory in that way?
I don't want to say I stumbled into it... but I stumbled into it. I was doing litigation for about 10 or more years out of law school. I always liked the process. I always thought that there was kind of an elegance to the process, in that there is imbued fairness into what could be a very contentious proceeding. If you didn't like the outcome, you could complain about a judge or a jury, but if questioned, you'd be hard pressed to find what really was unfair about it. You might think that it was tough break, yes, but that it wasn't unfair.

But what kind of got me to cross the Rubicon, so to speak, was that I was appearing in law and motion in Alameda County frequently and Judge Lambden, who is now retired, asked me if I wanted to serve as a referee. There were cases that were either very contentious or very complex, and a referee would be appointed to make recommendations to the judge. I started doing that and I was pretty good at it. The judges liked my work and some of the parties requested me. I started thinking about it and I said — maybe this is what I should be doing. So, I applied to be a judge and I was appointed.

You've been on the bench for a number of years now. What about your past legal practice, your career before you were on the bench, or your personal experiences have you found most useful in your role as a judicial officer?

What's been really helpful for me as a judge are the experiences that I had before law school. I did all types of things. I worked as a playground director in Oakland. I worked in a custodial lockup facility for a few years while I was going to school. I worked for the mayor of Oakland as a community liaison for a couple of years. I worked in an auto parts remanufacturing company. Those experiences have given me exposure to all different types of people and all different types of situations.

When people — litigants, jurors, attorneys — are in your court, you have to listen to them, and they have to know that you are listening to them, that you hearing what they are saying, and that you are taking it into account. I learned the skills to really listen to people before law school.

Which of the judicial assignments you have had is your favorite?
It's a toss-up between law and motion and civil direct, because I love doing trials. It's just a wonderful experience to be sitting in a courtroom while a jury trial is going on because you're living pure democracy and you're overseeing a process that is the foundation of our democracy and our freedom. I think I should be paying the government to let me do it.

But I did a stint in law and motion where it just so happened that there were a lot of big, significant issues that came up, such as police accountability and whether felons could vote. So although it didn't have the excitement of a jury trial, I got a lot of satisfaction from it, because I knew that any time I decided something, I was going to really affect a lot of people, and so I had to work extra hard at it.

Are there any things that you don't like seeing in your court room?
There's never a reason to make a personal attack on anyone. In addition to not being professional, it's not effective for your client. I have found that the best lawyers never attack their opponent personally. If they're attacked personally, they don't respond. They are gracious to everyone in the courtroom.

Do you have advice for attorneys who perceive themselves to be subject to that kind of attack and are trying to rise above it? And I ask that as a woman lawyer who has occasionally experienced other attorneys saying offensive things or treating me with disrespect because I'm a woman.
That's a good question. The problem you've described is a big problem, and it's one that needs to be addressed. It is not as big as it was 30 years ago when I started practicing law, when looking back on it, there was really inappropriate behavior and rampant sexism throughout a lot of the profession. The suggestion or the advice I have is that you have to be firm; you have to be confident; you have to be assertive.

I'll give you an example. Here's one of my pet peeves: when I have counsel in my courtroom and a male attorney starts referring to a female attorney as "she." I correct them immediately. I won't let that pass in my courtroom. It's disrespectful. It diminishes the woman attorney. How do you respond to that? There's a lot of different ways, but a very effective way of responding to it is when the other attorney has said what they have to say, you very firmly and very forcefully say, "Mr. So and So, my name is Ms. Jones. My name is not she." Doing it that way, you take back the power that that person's trying to take from you. If it happens again, you respectfully turn to the court and you say, "Your Honor, could you please tell Mr. Jones to address me as counsel or Ms. Smith? My name is not 'she.'"

There's a lot of power in such an approach and, I guess I would call it 'grace.'

What effect has the COVID-19 pandemic had on your courtroom?
It's made us adjust to technology much faster. We've done a lot of hearings on Zoom and BlueJeans. Not too long ago, I actually completed a four-month jury trial, where the whole trial — from jury selection through verdict — was done via Zoom. I never saw the attorneys or the jurors in person. That is just one of many cases where, because of the pandemic, I have never seen the attorneys in person. Remote appearances, however, can present issues with respect to the presentations of evidence and the ability to observe the demeanor of witnesses and jurors. That's the bad news. The good news is that for things like law and motion hearings, remote appearances can be a tremendous efficiency. Attorneys don't have to travel an hour or two to court, then wait for their case to be heard, then have a 15-minute hearing, and then drive home. Instead, they can log on, and do other things while waiting for their case to be called. I think that part of it is great.

Do you think that Zoom is an effective means of conducting a trial?
Well, it is not the preferred way to do it in my view. That being said, we were able to actually hold trials, to conduct a fair proceeding where people were heard and were able to put their evidence on. It was just a less perfect way of doing it in a less perfect environment.

Are there any changes you've made to the way you run your courtroom during the last two years that you've found to be effective and ▶

positive and are hoping to be able to continue in the future?

One thing that I learned during the pandemic is that, through the remote appearance technology, I can get a lot of things done informally that I really couldn't get done before. For example, if there's a problem in the case and I need to talk to the parties about it, I can put it on for case management in two days, send the parties a BlueJeans invitation, and have them come in for a short case management conference, where we can get the problem worked out and keep the case moving. The old way of doing it was that we'd have to send out a letter and schedule the conference two weeks out. By that time, the problem may have become many times more complicated or events may have overtaken any possible solution. So I think the remote appearance technology has made us more responsive or given us the ability to respond better.

I have to imagine the last two years has created a significant backlog of cases. Do you have an understanding of what the plan for working through the backlog is?

We're doing the best we can. The challenge has been that every time in the past two years that we think we have gotten on track and we have a plan in place for dealing with the backlog, some development and with COVID has just knocked us off track. There were at least two occasions where we were scheduling trials and then Delta came and then Omicron came and that was kind of the end of it. It has just been hard to figure out the right solution for trials, and trial dates are what drives cases to conclusion.

Is there anything else you want you'd like to share with our readers?

We've been through a very difficult and traumatic time as a court system and as a profession with COVID. And I think that the lawyers have just been fantastic. The lawyers have been professional, they've been collaborative, they've been cooperative, they've worked with each other and they've worked with the court to try to get through this. And it has really renewed my faith in what is good about lawyers and what is good about the legal profession. The amount of cooperation and collaboration has just been astounding. And I don't know any other way to put it. I thank every lawyer that has appeared before me during this period of time for how they have conducted themselves. ◆

— Sonya Smallets, a partner at Minnis & Smallets, has been representing employees who have been discriminated against, harassed, or wrongfully terminated by their employers for more than fifteen years. She is the 2022 co-editor of this magazine and can be reached at sonya@minnisandsmallets.com.

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Cassie Springer Ayeni has handled plaintiff-side ERISA litigation, claims, and appeals since 2002, with a focus on disability employee benefits. She has been recognized on the *Northern California Super Lawyers* Top 100 and Top 50 Women lists. She was named a "Top 40 under 40" *Daily Journal* attorney in 2014, and a *Recorder* Top 50 Attorney "On The Fast Track" in 2012. She is proud to serve on the ACCTLA Board.



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Judge H. Glenn Kim

Interviewed by Tiega Varlak



To further our ties between the bench and bar, members of the ACCTLA interviewed a series of newly appointed judges in Alameda County and Contra Costa County to learn about their experiences, trials, tribulations, and advice for lawyers appearing before them.

H. Glenn Kim was appointed on November 10, 2021 and sworn in on January 10, 2022 to serve as judge in the Superior Court of Contra Costa County. He took his seat on January 10th in Department 29 in the Richmond Courthouse. Presently Judge Kim is handling misdemeanors, preliminary examinations, UDs, and small claims cases.

Born in Korea, Judge Kim immigrated with his parents, grandparents, cousins and older sister to America at the age of 3. His family settled in *Koreatown — a very low-income neighborhood in Los Angeles* — where Kim grew up in a one-bedroom apartment with his parents, grandparents and sister in what he characterized as a concrete jungle. Although his parents did not have much money, the home he grew up in was filled with love.

His teachers say that he excelled in math and science at an early age, so Kim was shipped off to Van Nuys for junior high school and then high school, where he enrolled in the magnet program. This experience taught him to wake up early and cherish the quiet time he had on the one-hour bus ride each way to school. During middle school and high school, Kim learned to make friends with a diverse group of people, befriending the Latino, black, and Filipino students he attended classes with. Back home in Koreatown, Kim learned important lessons about communication, respect, and how to present oneself when he had to interact with the active gang members who also called the neighborhood home.

Kim's family eventually saved up enough money to get a two-bedroom house that, to this day, makes Kim swell with pride. It wasn't until he visited his mother at her work as a seamstress that he realized just how hard she worked. His father also worked quite hard and instilled traits such as persistence, dedication and creativity in Kim when he would take him to help find items from along the road to sell at his stand at an outdoor swap meet.

Because he excelled academically, Kim was able to get accepted into the University of California at Berkeley, following in his older sister's footsteps. While at Cal, Kim pledged a fraternity and majored in economics. During his time at Cal, he realized that his family had made great sacrifices to enable him to attend Cal, and that he was one of the lucky ones. Many of his friends didn't make it to college; most joined the armed forces or worked manual jobs.

Understanding that it was his responsibility to not pass up the tremendous opportunity that Cal gave him, Kim worked nights and weekends as a warehouse worker, cigarette hawker, bookstore clerk, and whatever else he could do to make a living while studying full time. He graduated with a degree in economics.

Upon graduating from college, Kim got a job with an internet startup company and moved to New York for a three-month training program in sales. After the training program, the company gave him the choice between their Santa Clara and Boston locations. After speaking with his cousin, he chose to move to Boston.

While in Boston, he became very close to his cousin, her husband and their baby daughter. He left Boston when the company downsized and closed their Boston office. Approximately three months prior to 9/11, Kim went back to LA to live with his parents.

Kim was elated when his cousin and her family decided to come visit in September 2001. However, the joy left his body when he learned that the plane carrying his cousin and her family was the second one to crash into the Twin Towers. Kim's niece was the youngest 9/11 victim.

Before that day, Kim had never thought about law school. After learning what had happened to his family, he knew that he wanted to be a prosecutor. He spent the next two years preparing for the LSAT, re-taking classes and studying around the clock.

> "…the joy left his body when he learned that the plane carrying his cousin and her family was the second one to crash into the Twin Towers. Kim's niece was the youngest 9/11 victim.

His hard work paid off, and Kim was admitted to the University of San Francisco in 2004. While there, he was able to follow his dream to work for the judicial system when he landed a Pro Se Judicial externship with The Honorable Saundra Brown Armstrong. As a Pro Se Judicial Extern for Judge Armstrong, he learned that federal prosecutors are not always in court. He decided to shift his focus to the California Attorney General's Office. While working there, he worked on appellate matters, which he decided was not a good fit either. After graduation from law school, he decided that a county district attorney's office would be a better fit for him by allowing him to spend much of his time in the courtroom. In 2007, he was awarded a three-year contract with the Contra Costa County District Attorney's Office. He then became an Alameda County Deputy District Attorney. In that role, he prosecuted felonies, helping victims of sexual assault, domestic violence, and insurance fraud get justice. He tried cases big and small, including murder cases, and served as the calendar deputy at the Wiley Manuel courthouse in Oakland. This gave Kim a close-up view into how to best negotiate, understand the value of a case, and make friends along the way. He was working in the Alameda County District Attorney Workers' Compensation Fraud Unit under District Attorney Nancy O'Malley when he was elevated to the bench.

To help ACCTLA learn a little bit more about Judge Kim, here's some more information about where he finds hope, his likes and dislikes in running his courtroom, and what he does when he is not on the bench:

What was your first reaction when you learned of your appointment?
I felt excitement, joy, thankfulness, and was incredibly honored.

What are you most looking forward to in your new role on the bench?
I look forward to having a direct impact on the fairness of our justice system.

What judges and justices do you most admire? What traits of theirs do you hope to emulate?
Without naming names, I value judges ▶

and justices who haven't left their roots behind. Those jurists whose life experience shapes their decisions because they filter the law and the facts through the lens of their life experience.

I would emulate judges who are fair, decisive, and respectful to all.

Who are your most memorable mentors? What lessons did you learn from them?
I have had countless mentors in my life who I can never thank enough. So I've learned to pay it forward. What I've learned from them is the power of listening. The ability to listen and allowing someone to be heard goes a long way in helping people heal, learn, and grow.

You've been very involved in the community. What organizations' work did you feel passionate about and why?
I have been very active in the Bay Area legal community. I have served on the boards of the Alameda County Bar Association, the Asian Advisory Committee on Crime, the Asian American Prosecutors Association, the Korean Prosecutors Association, the Korean American Bar Association, and the ACBA's Judicial Appointments Evaluation Committee.

I'm passionate about increasing diversity in our legal profession and increasing legal access to our minority and immigrant communities. Increased diversity and access promotes trust and confidence in our legal system.

How would you deal with a pro se party appearing in your court?
Self-represented litigants give an opportunity for judges to foster trust and confidence in our judicial system. I would remain neutral and not become an advocate but understand that as a judge I may need to educate as well as move things along.

I would speak in plain language and explain necessary procedures and filing deadlines and set expectations. I would show patience. I would refer those who need assistance to self-help centers or attorney referral services.

Judges need to create an environment that is not intimidating but that is welcoming. I will listen intently, making sure that people feel that they are heard and that what they've said has been considered.

What is the best thing about being a judge?
The best thing about being a judge is being a role model, especially to the members of our community, to students and to young lawyers.

What is the hardest part about being a judge?
As a new judge, the hardest part is getting accustomed to the culture, protocols, and procedures that this position entails.

How do you prepare for a case over which you preside?
Depends on the type of hearing. Generally, I prepare for a case by first reviewing the court file, looking over the charges, the procedural history (i.e., judicial notes, minute orders), and relevant moving papers. Then I'll conduct any necessary legal research on the matter before calling the case.

What are your top pet peeves in the courtroom?
Disparaging remarks.

What differentiates a good lawyer from a great one?
A great lawyer has a great reputation that goes beyond which side of the courtroom they stand on. They have integrity, subject matter expertise, are reasonable, respectful, and know how to issue spot. Great lawyers are zealous advocates who understand that an adversarial process does not need to be a hostile one.

What do you do for fun/hobby/downtime?
I love spending time with my family, camping, fishing, and watching my children eat.

If you were not in the legal profession, what would you love to do for a living?
I would love to be a middle school teacher. ◆



—Tiega Varlak is a professional lawyer, practicing civil litigation, including personal injury, employment law, and civil rights cases in California. Tiega was born in Central New York and was educated at Howard University, a historically black college in Washington D.C. After graduating cum laude, Tiega attended Howard Law on a full academic scholarship. Following law school, she moved to the West Coast to pursue BigLaw. It was in this position that she took on a landlord tenant case pro bono that ended up in trial, while she was a first-year associate. This project, taught her that she could make an impact through work in the courtroom. Following her stint at BigLaw, Tiega worked at her cousin's personal injury firm in San Jose. She grew as a lawyer in Silicon Valley's back yard and was able to expand her practice by taking on conflict cases through her county bar's conflict panel and lawyer referral service. She was able to grow her practice after many years and has had her own firm since 2009. She currently lives and works in the Bay Area.

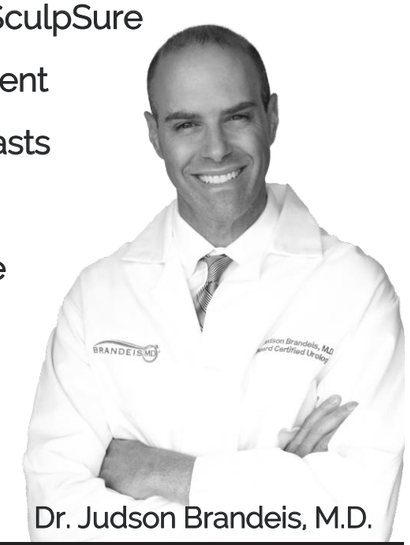
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Judge Stephanie K. Sato

Interviewed by Winston Moody



Stephanie K. Sato was appointed to serve as a Judge in the Alameda County Superior Court by Governor Gavin Newsom in July 2021. Prior to this appointment, Sato has served as an Administrative Law Judge for the California Unemployment Insurance Appeals Board since 2021. From 2014 to 2020, she was a sole practitioner the Law Offices of Stephanie K. Sato in Oakland, specializing in family law. Sato was an Associate at the Law Offices of Peter G. Loewenstein from 2011 to 2014 and at Stonehouse & Silva from 2007 to 2011. She was a Contracts Associate at IT Ascent from 2006 to 2007. She is a former president of the Alameda County Bar Association. Sato earned a Juris Doctor degree from the Santa Clara University School of Law.

What motivated you to become an attorney?
In college, I took an argumentative writing class — I think it was Rhetoric 1A in Berkeley, and I really enjoyed it. Rhetoric has a few different tracks, and one of them is pre-law. I ended up majoring in Rhetoric on the pre-law track. After I graduated from college, I lived and worked in Japan for a year, and when I returned to the Bay Area, I thought about law school. But it is such a big investment, and it is expensive. So I found a job as a paralegal first. I wanted to see if I enjoyed working in the legal field before applying to law school. I worked as a paralegal for two years. I found it interesting but wanted to have more responsibility than a paralegal, so I applied for law school.

What were the most challenging and rewarding aspects of your work in family law?
It was challenging to assist clients during one of the most stressful times of their lives. Oftentimes they were emotional, fearful and upset. Some people found it difficult to share children with a spouse they no longer trusted, or to accept that every other year, their children spend Christmas with the other parent and not with them. Some found it difficult to accept that they would need to pay so much in support and worried they could not pay their bills. Others were daunted by the fact that they would need to work full time after being a stay-at-home parent for so long. Yet, it was rewarding to support and empower them by giving them tools on how to co-parent their children, helping them get on their feet and get a job, educating them so they understand what assets and debts they have (some clients did not have an understanding of their financial situation as they did not pay the family bills), and advising them on how to move forward with their lives.

What did you learn from being a sole practitioner?
When I worked for others, I had the luxury of asking for others' opinions and guidance if I was uncertain about how to approach a case. As a solo practitioner, while I could call friends for advice, for the most part I had to sit down and figure things out myself. It gave me the confidence to know I could figure things out on my own. I also learned more about the business aspects of running a practice and managing staff.

What are the most challenging and rewarding aspects of being a new judge?
My first assignment was in the criminal department, and I had no criminal experience. There were so many codes, acronyms, and things to learn. It was challenging to learn a new area of law and how to be a judge while having a young child at home and being pregnant with a second. My new assignment is in family law, and even though I have family law experience, I am aware that there will still be an adjustment period as I need to keep different things in mind as a judge that I did not have to be concerned about as an attorney. For instance, courtroom control, balancing litigants feeling heard with getting through a packed calendar, making sure my words and nonverbal cues are neutral and fair.

The hard work is rewarding when I see that I'm becoming more efficient — prepping cases becomes quicker, hearings feel slower and calmer. When I start my family law assignment, I know it will be rewarding to help keep children safe and healthy, help families heal and move forward.

What experiences best prepared you for your work as a judge?
Being a family law attorney gave me experience working with people from many different walks of life, as well as experience working with emotional people and emotional issues. I believe that experience is helpful in any judicial assignment.

Aside from becoming a judge, what do you consider to be your greatest accomplishments in your career?
Being able to balance being a wife and a mother, and being involved in community service, while having a successful career. I opened my solo practice when I was pregnant with my first child. I served as President of the Alameda County Bar Association when my child was one year old, and I would bring her to events. While my involvement in community service would increase or decrease depending on the needs of my family, I never stopped volunteering. I believe it is important to give back to the community.

What advice would you give to an attorney who would like to become a judge?
Before you apply, talk to as many judges as you can. Be frank and ask them what they like and don't like about their job, and ask what their typical day and schedule is like, so you can decide if this is truly what you want to pursue. And if you do know you want to become a judge, ask them what skills they believe are necessary to be a good judge, and how they believe you can hone those skills. It is never too early to start the process of talking to judges. It may take years before you feel ready to apply.

What advice would you give to attorneys appearing before you?
You can advocate while still being respectful to the staff, the other attorney, and the court. Meet and confer with the other side as much as possible. Be direct, organized, and concise in your pleadings; I will read them. Do not throw out codes and phrases and expect the court to know everything; especially if it is a new area of law, the attorneys can make it easier by being direct and explaining things, or filing Points & Authorities.

How do you like to spend your free time?
I like spending time with my family. I'm an NBA basketball fan, I like to read, and I like trying new things.

What do you enjoy about Alameda County?
The diversity, and the people. ◆



— Winston W. Moody is a partner attorney with Gwilliam Ivary Chiosso Cavalli & Brewer, APC. His practice focuses on all aspects of employment law and personal injury litigation. He is dedicated to achieving the best possible results for every one of his clients in every case he handles.

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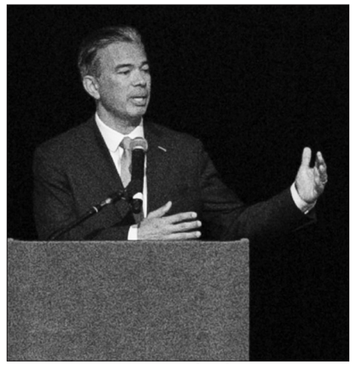
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Judge Jennifer Lee

Interviewed by Alison M. Karp



With extensive experience as a public defender and a district attorney, Judge Jennifer Lee brings a unique perspective to the bench, one rooted in a belief that every litigant deserves to be listened to and that lawyers and judges should serve their communities.

Judge Lee was born and raised in Los Angeles before moving to Alameda for secondary school. She graduated from Cal State University at Northridge and received her law degree from Penn State University's Dickinson School of Law in 1997. Judge Lee began her legal career at the Centre County public defender's office in Pennsylvania. She moved to the Bay Area in 1999 and worked for Legal Aid in Marin County, followed by the Alameda County public defender's office. In 2002, Judge Lee returned to L.A. where she worked for the City Attorney's Office prosecuting misdemeanors, and in 2006 joined the Los Angeles County District Attorney's Office, where she was assigned to the hardcore gang unit, specializing in complex litigation with an emphasis on circumstantial evidence. She returned to the Bay Area in 2018 and took a position with Apple Inc. as security counsel before becoming a Contra Costa Superior Court Commissioner in 2019.

Judge Lee was appointed to the Contra Costa County bench in September 2021. She filled the vacancy created by the removal of Judge John T. Laettner. She hears felony cases in Department 25 at the A.F. Bray Courthouse in Martinez.

Judge Lee graciously sat down for an interview to discuss what lead her to the bench, how she runs her courtroom, and advice for lawyers. Below are excerpts of that interview edited for length and clarity.

You have a very interesting and varied background. Tell me about your path into the legal profession.

I ended up going to law school in Pennsylvania by chance. I am a native of Los Angeles and was living there in 1994. One night I was working on completing my law school applications and went to bed at about 2 a.m. Two hours later, the Northridge earthquake happened. I lost everything I owned, including my home … and all my law school applications. East coast schools were more sympathetic to me surviving an earthquake — and to accepting late applications — than California schools. So, I moved cross country, which was easy with only a car, a couple of bags, and my cats.

After graduating, I took the Pennsylvania Bar. I knew I wanted to work in public interest, I just didn't know in what fashion. I saw a job on the alumni board for a unique position at the public defender's office in Centre County. The chief public defender, David Crowley, was very forward thinking for the '90s. He had applied for a grant from the Department of Justice to see if juveniles would be more successful in completing probation and staying out of adult court if they had one attorney represent them from arraignment through trial, as opposed to the way juvenile cases were historically shuffled around between attorneys. And I thought "I can do that!" I got the job, and I loved every second of it.

Dave Crowley is an amazing man. He allowed me to do really innovative and creative things. The public defender's office received a lot of calls from Penn State because students wanted to intern with us, but you can't do much with an undergrad intern in the law. I knew of a local agency that had received a grant to start a mentoring program for high-risk youth but didn't have any volunteers yet. So I set up a program with Penn State where undergrads did a year-long independent project with the local agency mentoring high-risk youth. I identified and referred high-risk youth to the agency and acted as the offsite supervisor, while the agency was the onsite supervisor. The differences the program made were incredible. We saw a dramatic decrease in crossover from juvenile court to adult court.

I set up another program with Pennsylvania juvenile probation. I told them we needed a carrot-and-stick incentive program, because the kids needed to feel their efforts and progress were seen. The worst thing when you're a kid is to feel like you're doing everything right, but no one acknowledges it. The probation department was incredibly open-minded about it. They helped the kids who were doing really well on probation hold car-wash fundraisers and with the money earned took the kids whitewater rafting. On the other side, I would take those kids that were not doing so well for a "scared straight" prison visit where inmates talked to them. For some kids, it made a real difference. Our whole idea was to help these kids succeed, and some needed more of a push than others. By the time the grant ended two years later, the program was fully funded by the county.

What did you do when the grant ended?

Well, there are only so many winters a California kid can take! So, I took the California bar, and — thankfully! — passed. When I came back, I worked at Legal Aid of Marin. My parents were huge believers in always being there for your community, that you stand together as a community, and that we all have to help each other. My father owned a pharmacy and when there were folks who couldn't pay for their medicine, he would accept cookies or whatever they could offer, because he believed it was his job to support his community. I got a lot of that from my parents, so all I've ever wanted to do is work in public interest. I could never see myself doing anything different. My dad and mom were the most generous, kind, compassionate human beings, and if I can be just a tenth of what they were, then I can say I was successful.

Although I enjoyed working at Legal Aid, I wanted to get back to the Public Defender's Office. I got a job at the Alameda County Public Defender's Office. I loved it there so much, I probably never would have left. But my then-husband's stepfather was very ill, and his mom needed help. Family comes first, so we moved back to L.A.

What did you love the most about being an Alameda County public defender?

Everything! I loved the people. I loved the comradery. I loved the passion and the humor. I loved the difference in the law that we were making. The people I worked with were some of the most incredibly talented attorneys, and they did trailblazing work. Just to be part of it was incredible. I have nothing but good memories of that place.

Where did you work when you returned to L.A.?

I went to the City Attorney's Office, prosecuting misdemeanors. I liked having discretion and the perspective from the other side. I understood you can't expect people to behave the way you would, because they don't think like you, they don't have your same experiences. People's reasons for doing something are sometimes built into how they were brought up.

When I was a public defender, I learned one day that one of my foster youths had ended up in custody. I went to see her, and she and I sat and talked for a long time. It was what we always wanted to avoid. Having that insight, I went to the D.A. assigned to her case and said, "I'm not going to tell you what to do but let me just give you a little background here, and you do with this information what you will." And he listened. That meant a lot to me that he listened, and he really considered what was happening and what had happened to her that got her to that place.

As a prosecutor, now I was in that role. I've always been good at listening and with my experience I was able to consider the whole picture. Two years into the job, the public defender's office called me about a position, but I declined. Having that empathy and understanding from my prior experience, I thought I could do more as a prosecutor. So, I applied to the District Attorney's Office and was a D.A. for a long time. I loved it. It was never about winning, because nobody wins in these cases, they're just terrible. But I ▶

liked having discretion, being able to see things from both sides, and being a D.A. who listened.

Tell me about your time in the D.A.'s Office.
I was assigned to the gang division and prosecuted homicides. My specialty is complex litigation, with an emphasis on circumstantial evidence cases. Unfortunately, a lot of my victims were kids … and so were my defendants, often barely over 18. That's why I say nobody wins, because closure is a myth, there's no such thing. And you grieve the living, just like you grieve the dead. The families whose kids were going to prison, they lose something too. Their life is never the same again. It's just hard. You have to remember that and treat people accordingly.

When you returned to the Bay Area, you were a commissioner before being appointed to the bench. Looking back, did that experience help prepare you to be a judge?
I got to peek behind the curtain as a commissioner. I had an idea what it was like to be a bench officer, but the reality was drastically different. As a neutral, I have no interest in the outcome. All I care about is making the right rulings, treating people well, and making sure the cases are moving. But it took me a bit to shed my advocate skin. I'm glad I had that experience as a commissioner because it was harder than I thought it would be. I would pause to make sure my rulings were based on the evidence I was hearing. It got easier with every case. As a neutral you're constantly checking yourself and your bias every day. Every single day I reflect on every ruling I made, because I always want to make sure it's for the right reasons, and if it's for the wrong reasons then I need to fix it.

I loved being a commissioner. Ninety percent of my cases were self-represented litigants, and I enjoyed the interaction with the public. A lot of times folks would say, "you're not scary" or "thank you for listening." I just received a lovely thank you note from a traffic litigant the other day, thanking me for listening. If I hadn't been blessed to get this job, I would have loved staying a commissioner.

What challenges have you faced on the bench that you didn't anticipate?
I didn't really think about the management side of it. As a lawyer you are myopic, you just do your thing. It's different when you're sitting on the bench, because you have to move things along and balance all the personalities and try not to make people feel rushed. I don't want anyone to ever feel rushed, because these are important decisions people are making that affect their liberty and they should be given due care.

Also, as an outsider coming into a different county, I have a different way of doing things and I'm not embedded in the culture here. I think that is challenging sometimes, not just for myself, but for the people dealing with me, which is fair, I understand it. People are used to doing things a certain way and you have a new person who does things a little bit differently. It's all about finding solutions that can work. People here are really nice and very welcoming, so this has been a positive challenge.

Covid has introduced the widespread use of technology and remote appearances into the courtroom. What are your thoughts about the role of virtual hearings in the future?
The pandemic showed us there's value to remote appearances for smaller less critical stages of the proceedings. As a commissioner, I presided over a variety of cases, including traffic, limited civil, law and motion, and small claims. In traffic, before Covid, everything was in person, including arraignments. That's a lot to ask of people just to enter a not guilty plea — taking time off work, finding childcare, missing medical appointments. In unlawful detainers, people are losing their home because they can't afford to pay their rent, and then they're being asked to miss work. That's part of a vicious cycle. Also, because of the nature of small claims, they can be very contentious. Sometimes having folks not in the same room can bring the temperature down.

I do think there is a danger in overreliance on technology, though. In court, particularly in trials, it's the human element that drives our courts and drives our cases. So, it's about striking that balance, and I think we are working towards hitting that balance. I'm looking forward to everyone having their masks off. I think that people want to be heard, and when they can see your whole face and they can see that you are engaging with them, it makes a difference.

What advice do you have for new lawyers?
One of the most important things is to always be prepared. Be a critical thinker, and never assume anything. Ask "who, what, when, where, how, and why." It's ok to ask questions. Don't be afraid of not knowing something. I think when attorneys are new, and we've all been there, you don't want someone to not respect you because you don't know how to do something, but it's actually the opposite. People gain confidence in you when you ask, "how do I do this?" or "do you know who I could talk to about this?" because it shows you are thinking about things critically and are willing to learn. Court is an exercise in humility, and it's ok to not know something. There are things I don't know. I'm willing to say that, and I'm willing to be wrong, and I'm willing to learn. It's ok. Don't let your fear get in the way. Have the confidence to say I don't know and to ask questions. No one is going to scream at you — court is not as entertaining as television. Also, it is important to be prepared, but you could be the most prepared person in the room and things will still go wrong. Trials are fluid and humans are not predictable. Do the best you can and be honest and open. Your reputation and integrity will carry the day.

You require attorneys to provide a copy of any case they cite outside of the normal course. Why is that?
I want the other side to have a chance to look at it and, if needed, request a second call so they can read it fully. Everyone should get a chance to make an argument and feel prepared. I don't ever want anyone to be blindsided. A trial is a search for the truth, so I want everyone to have a chance to be heard. It gives the other side an opportunity to make sure the case is being cited correctly, shepardize it, or point out something in the case that actually works against the citing party.

Do you have any pet peeves in your courtroom?
Yes. It's a big pet peeve of mine when attorneys just assume something. It is an attorney's job — and a judge's job — to be a critical thinker. When we assume, things go wrong. I expect attorneys to be prepared, but I will have more respect for you saying "I'm not prepared to address that" or "I didn't think this through" than saying "I assumed." My goal is to eradicate the phrase "I assumed" from the English language.

What advice would you give to lawyers who aspire to be a judge?
I think a variety of experience helps, as does really being a part of your community outside of the law. There is a tendency in our profession to get caught up in bar associations and Inns of Court. All those are wonderful, but our courts are full of folks who aren't part of legal associations. As lawyers and judges, we work for the community. To understand our community, we should be working in and contributing to it. I love volunteer work. I think it's impactful. I volunteer at St. Vincent DePaul's food kitchen and tutor kids online through the United Way. I have always enjoyed volunteering. You learn so much from other people that as a judge you can bring with you. I worked retail for years. That's an education. Anything where you are working with the public, outside of your legal career, will enrich you, not just as a bench officer, but as a human. ◆



— Alison M. Karp is a member of the California and Connecticut Bar. Alison is a passionate advocate for the injured. She represents persons who have suffered serious injury as a result of automobile accidents, defective products, dangerous premises, negligence, and intentional torts.

— ACCTLA Calendar of Events —

Thursday, May 19, 2022
Maximizing Non-Economic Damage Recovery
Noon • MCLE (zoom)

Sunday, July 10, 2022
5th Annual Summer BBQ & Potluck
11:00am • Roberts Regional Park

Thursday, September 29, 2022
Fall Social
5:30 - 7:30pm • Lafayette Park Hotel

Thursday, January 19, 2023
Judges' Night Gala
The Rotunda, Oakland

For questions, please contact Mariana Harris, acctriallawyers@gmail.com.

Judge Peter E. Borkon

Interviewed by Winston W. Moody



Governor Gavin Newsom appointed Peter E. Borkon to fill the Alameda County Superior Court vacancy created by Judge Patrick J. Zika's retirement.

Judge Borkon graduated from Southern Illinois University Law School in 1996. He served as a law clerk at the U.S. District Court for the Southern District of Illinois for two years and then packed his bags for the West Coast. In 1998, he moved to California to work at the United States Court of Appeals for the Ninth Circuit, initially as a civil research attorney and then as a senior motions attorney.

In 2001, Judge Borkon transitioned into practicing at law firms. During his 25-year career, he focused on complex civil litigation, primarily securities fraud class actions, as well as shareholder derivative and corporate governance litigation. Most recently, Judge Borkon was a partner and Co-Director of Institutional Investor Relations at Bleichmar Fonti & Auld LLP.

What motivated you to become an attorney?
In large part, I became a lawyer after watching my parents' contentious divorce. I was a young child at the time and it struck me how courageous my mother was when she decided to go to law school part time while working and raising two children. She went to law school to learn and understand the legal system and she instilled in us the value of education, persistence and being of service to others. My deep admiration for her and my interactions with the legal system during that time motivated me to practice law with the goal of advancing justice for others.

What were the most challenging aspects of your work in securities fraud litigation?
Securities fraud litigation has evolved to be more and more challenging in recent decades. The pleading standards for properly alleging a securities fraud cause of action and the evidentiary standards are very tough on investors.

What did you learn from your work as an Adjunct Professor?
I taught Legal Research and Writing to first-year law students at Hastings, and learned that stepping back from a legal issue to consider things from a fresh perspective can assist in finding solutions that were not readily apparent at first glance.

What experiences best prepared you for your work as a judge?
Well, my clerkships at the federal courts offered me a glimpse at what judges do daily. I also volunteered as a Judge *Pro Tem* for several years. Additionally, I believe that my service as a volunteer mediator and my work for various community organizations will help me listen carefully and decide issues in a neutral, unbiased manner.

Aside from becoming a judge, what do you consider to be your greatest accomplishments in your career?
Like all bench officers, there are many milestones along my path to the bench and all of them were important. To pick just one accomplishment is too tough but moving from the Midwest to California would be the most personally impactful decision in my career. California and Alameda County have been incredibly good to me and it's an honor to have the opportunity to be of service here.

What advice would you give to an attorney who would like to become a judge?
Put in the hard work to build your skills as a lawyer, remember there are usually many sides to any issue, and be patient.

What advice would you give to attorneys appearing before you?
I tend to appreciate lawyers who are prepared, able to candidly see the strengths and weaknesses of their positions and who offer reasonable solutions to problems.

How do you like to spend your free time?
When I'm not at or preparing for work, I spend time at home with my husband and our two-year-old Goldendoodle. You're also likely to find me on a bicycle attempting to put in the mileage to prepare for the AIDS Lifecycle this June.

What do you enjoy about Alameda County?
Alameda County has been my work home for 15 years. Alameda County is an amazing community to live, work and recreate. We're big fans of dining out and finding local restaurants is a favorite activity. I also love that the Alameda legal community is a welcoming, collegial, nurturing bar where attorneys from diverse backgrounds can find opportunities to thrive. ◆

— Winston W. Moody is a partner attorney with Gwilliam Ivary Chiosso Cavalli & Brewer, APC. His practice focuses on all aspects of employment law and personal injury litigation. He is dedicated to achieving the best possible results for every one of his clients in every case he handles. Mr. Moody can be reached at 510.832.5411.



ACCTLA Takes Steps to Promote Diversity in the Bay Area Legal Community

by Megan Burns

The legal profession has a longstanding problem: the starkly disproportionate number of minorities in the profession. The American Bar Association (ABA) conducted a survey in 2021 of more than 4,000 of its members. The ABA study confirmed that people of color continue to be significantly underrepresented in the legal profession:[1]

In 2021, just 4.7% of lawyers were Black, a decline from 4.8% in 2011, while 13.4% of the U.S. population is Black. Native Americans remain the smallest racial group among U.S. lawyers at just 0.4%, down from 1% in 2011, while 1.3% of the U.S. population is Native American. Likewise, in 2021, 4.8% of all lawyers were Hispanic, up nearly one percentage point from 2011, despite the U.S. population being 18.5% Hispanic. Only 2.5% of all lawyers were Asian, up from 1.7% a decade earlier, although the U.S. population is 5.9% Asian.

The pandemic has exacerbated the challenges faced by women and lawyers of color. For example, while 44% of the male lawyers surveyed by the ABA said that they found it was hard to keep home and work separate and 41% reported that their work was disrupted by family and household obligations, notably more female lawyers and lawyers of color reported these concerns — 63% of female lawyers reported finding it hard to keep work and family separate and 57% reported that their work was disrupted by family and household obligations, while 62% of lawyers of color reported finding it hard to keep work and family separate and 57% reported that their work was disrupted by family and household obligations. While only 34% of male lawyers reported that they felt stress about work during the pandemic, 52% of female lawyers and 48% of lawyers of color reported feeling this way.[2]

The State Bar of California is taking significant steps to address the lack of diversity in the legal profession. California recently enacted Business and Professions Code section 6001.3, which directs the State Bar to develop and implement a plan demonstrating its ongoing "commitment to and support of effective policies and activities to enhance access, fairness, and diversity in the legal profession and the elimination of bias in the practice of law." In its 2021 Diversity, Equity, & Inclusion Plan,[3] the State Bar identified several concrete steps to help tackle this problem, including:

- Building awareness through mandatory implicit bias trainings
- Developing enhanced CLE opportunities on elimination of bias
- Creating diverse pipelines into the legal profession
- Enhancing demographic reporting requirements for California law schools
- Improving law school retention rates and bar passage rates for minority students

In response to this significant problem, under the leadership of 2021 President Jayme Walker, the Alameda-Contra Costa Trial Lawyers' Association (ACCTLA) is also taking an important step to address the lack of diversity in the legal profession by establishing a diversity scholarship program. The intent of the scholarship program is to provide much-needed funds to diverse law students that demonstrate an interest in becoming a plaintiff's lawyer, criminal defense, or family law lawyer and who have shown a commitment to serving the Alameda or Contra Costa County communities. Four awardees were chosen by the executive board in November 2021 and the recipients were awarded scholarships at the annual Judge's Night event. Jayme Walker recently commented:

The most rewarding part of being President of ACCTLA in 2021 was awarding our first ever diversity scholarship to all 4 applicants. I was so inspired by their incredible journeys to become lawyers and their commitment to diversity and giving back to their communities. I truly hope ACCTLA continues to support the next generation of diverse lawyers with generous donations from our members towards the diversity scholarship.

ACCTLA's goal is to develop an endowment for its diversity scholarship program to ensure that the organization is able to continue to promote diversity in the legal profession for many years to come. This is just one of the many steps that ACCTLA has taken, and will continue to take, to promote and encourage the participation of women, persons of color, LGBTQ persons, and persons with disabilities in the practice of plaintiffs litigation, criminal defense, and family law. ACCTLA recognizes that diverse lawyers are chronically underrepresented in the Plaintiff's bar and trial lawyer's bar and believe that it is essential to do what we can to remedy the lack of diversity so that consumer litigants, employees, criminal defendants, and family law litigants can have the opportunity for diverse representation and so that diverse perspectives contribute to the practice of law in these areas.

ACCTLA is pleased to introduce our legal community to the four talented and bright law students who are the 2022 recipients of the ACCTLA diversity scholarship program and it is an honor to share excerpts from their personal statements:

SALINA ISAQ

As a low-income, queer Muslim woman of color and as a first-generation American, I will contribute to building a more diverse legal community dedicated to plaintiff's litigation. I am particularly committed to representing low-wage, women of color workers. My lived experiences provide me with a unique outlook and sensitivity to the overt and opaque hurdles women of color experience… By age 18, my aspirations were maintaining my job as a nanny. I never once considered pursuing an education past high school. However, other women of color in my life embraced my struggles and taught me how to advocate for my needs… I entered law school as an act of resistance to my circumstances and out of survival. Pursuing a career in plaintiff-side employment law is so much more than a job; it is the first step to supporting and defending the welfare of my community.

ANTONIO REZA

I am uniquely positioned in my intersectionality to bring various levels of diversity to the legal profession. I'm a Latino from a lower socio-economic class, and I grew up in a single parent household… I have a commitment to criminal law and a desire to be a public defender. The reason for this is because I have been directly impacted by the criminal justice system. I have seen firsthand how my family, friends, and people from my neighborhood have become incarcerated and how important public defenders have been along the way… I regularly give speeches and sit on panels around the nation talking about my journey to law school and how others from similarly situated positions or backgrounds can do the same. I often tell them: "If I can do it. You can do it. I'm not just talking about it. I'm being about it."

MARA ALDAJANI

I believe as a Palestinian American who was a dreamer for 24 years, I will add much to the diverse perspective as a family law attorney. I was born in Kuwait as a refugee with no official status but just a document confirming who I am and where I was born. After the first gulf war, my family was kicked out with nothing but our clothes on our back. We literally walked the merciless desert of Iraq to reach our safe haven — the country of Jordan… I have come back to my home state of California to study law and pursue my dreams… As a single mother, my objective to study law and succeed is not only for myself but for my children. I want to teach them that whatever life throws at you, you get up, dream big, and work hard… I genuinely believe, if I were to become a family court attorney, I will excel in my duties to my clients, and most of all, my responsibility towards children in bad family situations.

JAMIE RUIZ

Although I was born in the United States, I spent the onset of my adolescence in Guanajuato, Mexico, my true hometown… Throughout my adolescence, the idea of attending an institution of higher education had never been discussed nor encouraged. Considering the limited amount of education acquired by my parents, school was rarely viewed as a priority… Growing up, my parents never had access to quality legal representation, even when they needed it the most. This is the reason I chose to practice law because I want to provide quality legal representation to underserved communities like my own who have been forgotten, marginalized and denied the same equal opportunities for success. As a lawyer, I want to advocate for families like mine and help break the barrier between low-income individuals and quality legal representation. [The diversity scholarship] will facilitate my goal of becoming a public defender to help serve disadvantaged communities and advocate for social justice reform. ◆

> I want to provide quality legal representation to underserved communities like my own who have been forgotten, marginalized and denied the same equal opportunities for success.

— Megan Burns is a partner at Bonjour, Thorman, Burns & Dahm in Oakland.

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[1]Bremner, ABA's Profile of the Legal Profession Explores COVID-19's Lasting Impact, 2Civility (August 12, 2021) at https://www.2civility.org/the-aba-profile-of-the-legal-profession-explores-covid-19s-lasting-impact/ [as of March 13, 2022].

[2]American Bar Association: Profile of the Legal Profession 2021 at https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf [as of March 20, 2022].

[3]State Bar of California's 2021 Diversity, Equity, & Inclusion Plan (dated March 15, 2021) at https://www.calbar.ca.gov/Portals/0/documents/reports/Diversity-Equity-Inclusion-Plan-Report-2021-2022.pdf [as of March 13, 2022].

How to Win on Course and Scope

by Valerie T. McGinty

When your client is injured by an employee's negligence, your ability to show that the employer is responsible because the employee was in the course and scope of employment may be critical to obtaining any recovery for your client. This article examines both recent and seminal cases that serve as useful guideposts to line up your case for success while avoiding any traps for the unwary.

COURSE AND SCOPE LAW IN CALIFORNIA

The respondeat superior doctrine "holds an employer liable for torts of its employees committed within the scope of their employment." (*Marez v. Lyft, Inc.* (2020) 48 Cal.App.5th 569, 577.) The doctrine is "a deliberate allocation of the risk" whose underlying rationale is a rule of public policy whereby the "losses caused by the torts of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon that enterprise itself, as a required cost of doing business." (*Perez v. Van Groningen & Sons, Inc.* (1986) 41 Cal.3d 962, 967.)

Put another way, the "central justification for respondeat superior" liability is that losses which "foreseeably result from the conduct of the enterprise" "should be allocated to the enterprise as a cost of doing business." (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1003.)

Respondeat superior liability furthers three policy objectives:

(1) "to prevent the recurrence of the tortious conduct" because vicarious liability "creates a strong incentive for vigilance" by the employer who is "in a position to guard substantially against the evil to be prevented"

(2) "to give greater assurance of compensation to the victim"

(3) to "ensure that the victim's losses will be equitably borne by those who benefit from the enterprise that gave rise to the injury." (*Farmers, supra*, 11 Cal.4th at 1013, 1016; *see also Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 214.)

California courts use two tests for scope of employment under the respondeat superior doctrine. Under the first test, "the employer is liable if the activities that caused the employee to become an instrument of danger to others were undertaken with the employer's permission and were of some benefit to the employer, or in the absence of proof of benefit, the activities constituted a customary incident of employment." (*Marez, supra,* 48 Cal. App.5th at 577.) Under the second test, "an employee's conduct is within the scope of employment if (1) the act performed was either required or incident to [the employee's] duties or (2) the employee's misconduct could be reasonably foreseen by the employer in any event." (*Ibid*.)

Finally, to overcome this issue on summary judgment, counsel should underscore that the issue of course and scope is "ordinarily one of fact for the jury to determine." (*Mary M. supra,* 54 Cal.3d at 221.) And remind the court that the jury will be instructed that an employee's conduct is "within the scope" of employment if either: (a) It is reasonably related to the kinds of tasks that the employee was employed to perform; or (b) It is reasonably foreseeable in light of the employer's business or the employee's job responsibilities." (CACI 3720.)

ALIGN YOUR CASE WITH THESE RECENT SUCCESSFUL CASES

In *Purton v. Marriott International, Inc.*, (2013) 218 Cal.App.4th 499, an employee "consumed alcoholic beverages at an employer-hosted party and became intoxicated." (*Id.* at 502.) "The employee arrived home safely but then left to drive a coworker home. During that drive, the ▶

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employee struck another car, killing its driver." (*Ibid*.)

The trial court granted summary judgment, but the court of appeal reversed, holding that "an employer may be found liable for its employee's torts as long as the proximate cause of the injury (here, alcohol consumption) occurred within the scope of employment." (*Id.* at 502.) *Purton* held that it was "irrelevant that foreseeable effects of the employee's negligent conduct (here, the car accident) occurred at a time the employee was no longer acting within the scope of his or her employment" because "no legal justification exists for terminating the employer's liability as a matter of law simply because the employee arrived home safely from the employer-hosted party."

As *Purton* observed, the employer attempted to "ignore the fact that it created the risk of harm at its party by allowing an employee to consume alcohol to the point of intoxication," detailing the "numerous ways" that the employer "could have lessened this risk." *Purton* further observed that reversing summary judgment did not "impose respondeat superior liability: it merely results in this question being resolved by the trier of fact," who will "need to determine, based on the totality of the evidence presented," whether the employee's "act of leaving his home shortly after arriving from the party to drive a fellow employee to that employee's home was so 'unusual or startling' so as to render the car accident unforeseeable." (*Id*. at 511-512.)

In *Sumrall v. Modern Alloys, Inc.*, (2017) 10 Cal.App.5th 961, a construction company paid its employee only for the hours worked at a jobsite. Yet the company "expected the employee" to "commute to the company's yard" and then "drive a company truck from the yard to the jobsite" rather than driving "directly from his home to the jobsite." (*Id*. at 964-965.) The court also noted that the employee would transport "coworkers and materials" when he drove the company truck from the yard to the jobsite. (*Id*. at 965.)

"One day, while driving from his home to the yard, the employee collided with a motorcyclist, who sued the construction company." (*Ibid*.) The trial court granted summary judgment, ruling that the employee was commuting to his "work" and so was "not acting within the scope of his employment." (*Ibid*.)

But the appellate court reversed, holding there was a triable issue whether the employee was "on a business errand to the yard for the employer's benefit," which would have started "when the employee left his home." Accordingly, because it could not be said "as a matter of law that the employee was not on a business errand while commuting from his home to the employer's yard," the summary judgment was error. (*Ibid*.)

In an appeal handled by your undersigned, the opinion published on March 1 reversed summary judgment on the issue of course and scope. (*Perez v. City and County of San Francisco* (2022) 2022 WL 611530.)

In *Perez*, a police officer "left his Department-approved firearm unsecured in his vehicle after returning home from an assigned training session." (Opinion, p. 1.) The firearm was "stolen" from the car later that night and then used to kill the plaintiff's son. (Opinion, p. 1.)

The police officer brought his firearm to the training because he was working "in a police capacity" and "the jail was right next door" to the training. (Opinion, p. 3.) The training was "approximately eight hours, outdoors, and involved participants running" in "hot" weather and the officer had a "documented" "history of exhaustion." (Opinion, p. 3.) After the training, the officer drove straight to his home in San Francisco, arriving shortly before the end of his paid shift and "failed to follow his usual practice" of securing his loaded firearm inside his house. (Opinion at pp. 3-4.)

Summary judgment was reversed on the ground that a "jury could reasonably find the officer's failure to safely secure his weapon is "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business." (Opinion, pp. 1-2 (citing *Farmers, supra,* 11 Cal.4th at 1003).) The court emphasized that the "central role of firearms in policing is fairly unique to this enterprise." (Opinion, p. 12.) "Firearms are critical to police officers' ability to perform their jobs…" (Opinion, p.11.)

Accordingly, because the "City failed to demonstrate that Plaintiff cannot establish respondeat superior liability as a matter of law," summary judgment was reversed. (Opinion, p. 21.)

DISTINGUISH THESE RECENT ADVERSE CASES

In *Marez v. Lyft, Inc.*, (2020) 48 Cal. App.5th 569, a Lyft driver who was driving "a vehicle rented" through Lyft's "Express Drive program" struck plaintiffs' vehicles, causing significant injuries. (*Id.* at 572.) The trial court granted summary judgment, rejecting plaintiffs' argument that the driver was within the scope of his employment.

Lyft's express drive program "allows drivers to rent vehicles that are pre-approved for use on the Lyft platform" and "provides certain incentives to drivers who use it," including allowing the driver to "use the rental car for personal use." (*Id.* at 573.) The driver testified he did in fact use the rental car "for both personal driving and for Lyft." (*Ibid*.)

On the day of the accident, the driver was not working for Lyft but instead "drove his rental vehicle into San Francisco to work at a gaming conference." (*Id*. at 574.) After the conference, the driver did not plan to drive for Lyft either, but instead planned to drive "straight home 'and eat and sleep.'" (*Ibid*.)

The court of appeal affirmed summary judgment: "we cannot conclude Lyft derived any benefit" from the driver's "use of the vehicle on the day in question" because Lyft "did not require drivers to use their rental vehicles for personal purposes," "did not require drivers to be 'on call' or otherwise available to Lyft or potential rider," and "the facts do not even indicate [the driver] contemplated driving for Lyft on the day of the accident."

In *Halliburton Energy Services, Inc. v. Dept. of Transportation*, (2013) 220 Cal. App.4th 87, summary judgment was likewise affirmed because the employer could not be held "vicariously liable for the tortious conduct of its employee," who was "not acting within the scope of his employment at the time of the" car accident at issue. (*Id*. at 91.)

In *Halliburton*, the employee was assigned a company pickup truck and was told by his supervisor that he could "use the company vehicle to get to work and back and to run personal errands en route." (*Ibid*.) On the day of the accident, the employee was assigned to work "on an oil rig in the ocean near Seal Beach." (*Id*. at 92.) After his shift ended at 9:00 a.m., he drove "approximately 140 miles to Bakersfield, where he met his wife and daughter at a car dealership to purchase a vehicle for his wife." (*Ibid*.) He was on his way back to Seal Beach for the 9:00 p.m. start of his next shift when he was "involved in an accident" on the Grapevine.

Plaintiffs argued that respondeat superior liability applied because of the "incidental benefit" "exception to the going and coming rule." (*Id*. at 96.) Under this exception, "[w]hen the employer incidentally benefits from the employee's commute, that commute may become part of the employee's workday for the purposes of respondeat superior liability." (*Ibid*.) Other cases have applied the incidental benefit exception "when the employer furnishes, or requires the employee to furnish, a vehicle for transportation on the job, and the negligence occurs while the employee is traveling to or from work in that vehicle." (*Ibid*.)

But the exception "does not apply" if the employee "substantially departs from his or her employment duties during the commute" or "if the employee's entire trip serves only his or her own personal purposes." (*Id*. at 102.) Here, the employee's trip to Bakersfield "as a whole was entirely personal." (*Ibid*.) Accordingly, summary judgment was affirmed.

Knowing the landscape generally and these cases in particular will serve you in your continued efforts to obtain recovery for your clients who were harmed by an employee's negligence. ◆



— Valerie McGinty is a certified appellate specialist who represents plaintiffs exclusively. She has affirmed plaintiffs' jury verdicts on appeal without defeat. On March 1, 2022, she obtained a published reversal of summary judgment on course and scope of employment in Perez v. City and County of San Francisco (Case No. A161279). In 2016, Ms. McGinty was the recipient of CAOC's Marvin E. Lewis award, and she was a final nominee for CAOC's 2015 Consumer Attorney of the Year for her work on appeal that successfully resolved a multi-million dollar judgment for fatal elder abuse. In 2014, she received CAOC's Street Fighter of the Year award for her work as lead appellate counsel in Young v. Horizon West, (2013) 220 Cal. App.4th 1122. Ms. McGinty is a Super Lawyer and is rated AV Preeminent by Martindale Hubbell. To learn about Fund Her (the PAC she founded that has helped elect 37 women in five states) or about Register Her (the 501c3 she co-founded to register women voters across America), visit www.fundher.org and www.registerher.org.

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Doe v. Doe Corporation
Contra Costa Superior Court
Settlement $1,165,000
January 22, 2022
The client in this case is a 21-year-old male from China who was subject to racial discrimination in the form of physical and verbal abuse from his school teacher. After making multiple oral and written complaints about the treatment, the private school retaliated against him by attempting to expel him and to kidnap him in order to deport him back to China. The client's mother was on the phone during the kidnapping. The client suffers minor form of physical injury and severe form of PTSD with panic attacks. The client's mother has a negligent infliction of emotional distress claim. The client's past medical is around $23,000. Defendants contend that the client has poor English skills and was going to fail the school and dispute course and scope regarding the kidnapping.

Mediator
Kenneth Gack, JAMS
Plaintiffs' Attorney
Teresa Li, Law Offices of Teresa Li, PC

Doe v. Doe Corporation
Alameda Superior Court
Settlement $750,000
January 20, 2022
(minor's compensation approved)
An 11-year-old nonverbal child with Autism was physically abused by her therapist for seven months at the child's own house. The child's parents did not know about the abuse but noticed changes in the child's behavior. They made multiple complaints to the therapy agency who hired the therapist about the therapist. The agency refused to remove the therapist. The parents eventually installed a home surveillance camera and caught the therapist stepped on the child's hand a couple of times with her barefoot. The child suffers PTSD. Plaintiffs contend that the agency violated the California Health and Safety Codes by hiring an unqualified therapist and failed to supervise the therapist. The agency disputes prior knowledge that the therapist was abusive and disputes the extent of the minor's injuries and her future care. The case settled at mediation.

Plaintiffs' Attorney
Teresa Li, Law Offices of Teresa Li, PC

Garcia v. Whittier City School District
Los Angeles Superior Court
Settlement: $800,000
January 19, 2022
J.J., a 12-year-old boy with Down Syndrome, was physically abused by his adaptive physical education teacher Robert Owiecki at school for about one year. The mother first did not know the abuse but noticed her child had behavioral changes. She complained to the school and requested to move her son to a different classroom. However, unbeknownst to the mother, the same adoptive physical education teacher taught both classes. On December 8, 2016, J.J. refused P.E. class and Owiecki chased J.J. out of the classroom, pushed J.J. to the ground, stepped on J.J.'s eye with his foot, twisting in a motion like putting out a cigarette. The school failed to inform the parent about the incident until four hours later when the mother was scheduled to pick up the child from school. The mother then called the police. Owiecki pleaded no contest to assaulting J.J. but entered into a diversion program, which allowed him to seal his criminal court records under Penal Code Section 851.91.

Two months before the incident, multiple school staff made written complaints against Owiecki for his rough handling of special needs students. The school district gave Owiecki a written ▶

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reprimand two months before the subject incident, but did nothing to supervise him afterwards.

J.J. suffers PTSD and began talking to another imaginary J.J. after the abuse.

Plaintiffs took 11 depositions and defendants took two depositions. Plaintiffs were able to defeat two summary judgment motions filed by the school district and the teacher. Most importantly, the court kept the mother's negligent infliction of emotional distress claim even though she was not present at the time of the abuse.

In Owiecki's second summary judgment motion, Owiekci made evidentiary objection that any evidence relating to the criminal proceeding is inadmissible pursuant to Penal Code Section 851.91. The court agreed. Owiecki also disputes stepping on J.J. and contends that J.J.'s own testimony was untrustworthy due to his age and disability. The school district disputes course and scope.

Plaintiffs' Attorney
Teresa Li, Law Offices of Teresa Li, PC
Daniel Balaban, Balaban and Spielberger

Cullen v. Cavallo Point, et al
Marin Superior Court
Settlement: $500,000
December 13, 2021

On January 2, 2018, 55-year-old real estate agent Tim Cullen went to an upscale restaurant, Farley Bar, inside a luxury resort, Cavallo Point Lodge, in Sausalito to celebrate his brother's birthday. As he stood up to make a toast, the bar stool, custom made by Lily Jack (an upscale boutique furniture manufacturer) tipped backwards, causing Tim Cullen to lose his balance and fall backward. The fall was witnessed by his wife and his 14-year-old son. Before the incident, Farley Bar received multiple complaints that the barstools tipped easily and unstable. However, no customer had fallen or got injured by the barstools before this incident.

Plaintiffs brought a product liability claim against Lily Jack and negligence against the restaurant. Plaintiffs contend the barstool fails the ANSI BIFMA X5.4 standard for front loading stability.

Plaintiff Tim Cullen suffered a fractured rib and had two lung surgeries. Six months after the fall, his doctor replaced his 10-year-old bio-prosthetic heart valve. About two years after the incident, Tim Cullen was diagnosed with traumatic brain injury by a neurologist and confirmed by his brain MRI.

The wife and the son brought negligent infliction of emotional distress claim. Six months after the incident, the wife took the son and moved away from Tim Cullen.

Plaintiffs contend the injuries from the incident include rib fracture, two lung surgeries, heart valve replacement due to infections at the lung, and traumatic brain injury per his brain MRI. Lily Jack contends that the barstool was not defective. Cavallo Point denies that it had any prior knowledge that the bar stool was defective. Both defendants dispute the extent of Tim Cullen's injuries, and defendants contend that the heart valve replacement was not related to the incident because it was a 10-year-old bio-prosthetic valve and the average life span for the valve is around 10 years. Defendants also contend that because Tim Cullen failed to monitor his heart valve before the incident, the valve must have been in poor condition that needed replacement in any event. Defendants also dispute traumatic brain injury, blaming it on Tim Cullen's congenital condition of Dandy Walker syndrome. Defendants dispute the extent of Tim Cullen's wage loss claim since three years prior to the fall, Tim Cullen only made between $30,000 and $50,000. However, after the incident, in 2018, the plaintiff made around $90,000 as a real estate agent.

The case settled at a mandatory settlement conference, which was mediated by Diane Kruse.

Plaintiffs' Attorney
Teresa Li, Law Offices of Teresa Li, PC

Doe v. Doe Corporation
Alameda Superior Court
Settlement $450,000
September 8, 2021

A 24-year-old female sustained second and third degree burns to her legs when a five-year-old ceramic pot collapsed, spilling boiling hot soup on her. Plaintiffs brought the product liability lawsuit against the store that sold the pot. The store then cross complained its distributors, who possibly sold ceramic pots to the store during that time frame. Because the pot was manufactured in China, no party is able to sue the manufacturer. Plaintiffs contend that the pot had a manufacturing defect — it had numerous inclusions in the pot that was due to inadequate curing time. Plaintiff contends the inclusions weakened the structure integrity of the pot, causing it to fail. Defendant store denied that it ever sold this type of pot. The distributors also denied ever distributing this style of pot.

The plaintiff was unable to locate the receipt for the pot. Defendant and cross-defendants were unable to locate any record of not selling this type of pot. Plaintiff's past medical was around $10,000. Plaintiff suffers from burn injury and PTSD. The case settled at mediation.

Plaintiffs' Attorney
Teresa Li, Law Offices of Teresa Li, PC ◆

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