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Summer 2025

Alameda-Contra Costa
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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

Now in my 49th year, 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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executive director's corner



Mariana Harris

Another message from your friendly, neighborhood Executive Director.

One of the best ways you can make the most out of your ACCTLA membership is to attend events. Almost all of them are free and absolutely all of them include snacks and drinks.

But what they mainly provide is a chance to "talk attorney" to other members and oftentimes local judges. Anyone whose spouse or partner is not an attorney can understand and appreciate that! When you want to talk about something interesting/exciting/disappointing from the office, your partner's eyes simply glaze over and they make the appropriate "oh, really" comment or the ever-popular "that's interesting." While they have the best of intentions, non-attorney friends and family are likely to just not "get it." Chatting with your colleagues at an ACCTLA function gives you the opportunity to talk to some who really does "get it."

So, I encourage you to take advantage of the benefits that you are already paying for, by attending one of our events. You will be glad you did!! ◆

from the president



Teresa Li

All of our practices are encountering challenges from the pressures and changes in our trial courts. A great many of our Superior Court judges are recent appointments, with 26 new judges joining the bench in the past three years — a third of our total bench. These appointments (and one newly elected judge) are a well-qualified, diverse, and highly dedicated group of judicial officers. They are facing overwhelming caseloads with their desire to do full justice in each individual case before them. Contra Costa Superior Court has seen a significant turnover as well, with more than a dozen new judges taking the bench in the past three years. Couple this change with the continuing difficulties in administering a system that has seen a serious turnover in experienced clerks and support staff, technical challenges with the implementation of the e-portal, a lingering caseload hangover in both criminal and civil from the COVID years, and budget constraints — we have a court system that can be challenging to navigate and frustrating in the length of time to complete a case.

Our court officers in both counties are acutely aware of these issues and working hard to remedy them. For some of the problems, there are just no easy answers. But recently, the Alameda County Superior Court Bench and Bar Committee met, and I attended as ACCTLA president. It was announced that the ACSC is transitioning back to the Master Calendar court management system and dropping the Direct Calendar department system that has been in place for the past few years. The motivator is sky-high caseloads — in some direct assignment departments near 800 — which compares poorly to the 350 when the Direct Calendar system started. The new/old PJ Master Calendar system will include seven dedicated full time civil trial departments, and several law and motion departments. The transition is probably going to be either towards the end of this year or early next year. On the date of trial, cases will be assigned to a trial department, depending on their availabilities, the length of the trial, and other factors. But the primary driver on which case will go out first will be the age of the case. We are optimistic that this will increase the likelihood of getting out to trial on time, and decrease the backlog, since trial dates settle cases.

I am proud as your president that ACCTLA has actively participated in trying to make our courts serve our clients better and more quickly through attending and actively participating in the Bench-Bar Committees of both counties. Any ideas you may have for suggested changes or improvements are welcome! ◆

— Teresa Li is a trial attorney with the Law Offices of Teresa Li, PC, where she focuses on catastrophic personal injury cases. She can be reached at her San Francisco, South Bay or East Bay office at teresa@lawofficesofteresali.com.



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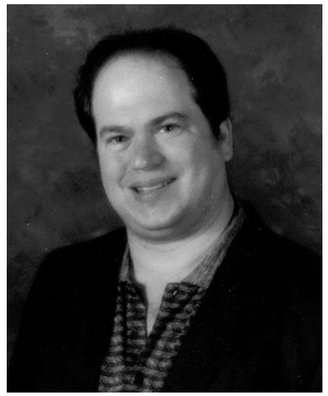
~In Memoriam~



John Toby Schreiber

March 30, 1960 – July 29, 2025

John T. Schreiber, a devoted husband, father, accomplished attorney, and lifelong lover of sports, books, and politics, passed away unexpectedly in the morning hours on July 29, 2025. John was a graduate of Santa Clara Law School and built a distinguished career as a Certified Appellate Specialist in California. Known for his meticulous preparation, sharp intellect, and passion for justice, John was recognized as a Northern California "Super Lawyer" for 10 consecutive years. He was an active ACCTLA Board member, serving on the Appellate Committee for many years. He was also very active in the community, serving on boards for healthcare access, educational and performing arts nonprofits.

Beyond his career, John's life was filled with the passions and quirks that made him unforgettable. He had an extraordinary memory—able to recall family birthdays, baseball stats, and even phone numbers long abandoned. A devoted fan of the Giants and 49ers, he shared his love of sports with his friends and loved ones.

John's curiosity extended well beyond the courtroom. He loved books, politics, and the law, often reading late into the night. He dedicated himself to politics in the pursuit of democracy. He served as a DNC Delegate in 1996 and traveled to Nevada during elections to serve as a poll monitor. His love of movies and music filled his home. John's warmth, humor, and creativity left a lasting imprint on those who knew and loved him. His daughters will always remember him as their bedtime storyteller, their game-day companion, and their biggest supporter. His wife will always reflect fondly on their shared love of music and traveling.

John is survived by his wife, Linda; his daughters, Zoe and Alana; his grandson, Sawyer; his brothers, Steve, Tom, and Matt; and the mother of his children, Theresa Sawyer. He now rests in peace with his mother, Morley Clark and his father, Toby Schreiber. He is also remembered by a wide circle of family, friends, colleagues, classmates (Santa Clara Law Class of 1986, Brandeis Class of 1982, Branson School Class of 1978) and clients who cherished his intellect, kindness, and dedication.

John Toby Schreiber will be missed.

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Know Your Clients' Wage and Hour Rights

by Aaron Kaufmann



It is important to know if an employee is being paid lawfully to establish the proper wages for workers' compensation benefits and to properly advise them about their related employment rights. This article presents a digest of key California provisions regarding wages, hours, and work-related expenses under California law. These protections are largely codified in California's Labor Code and Industrial Welfare Commission wage orders.[1] Anyone performing work for another is presumed to be an employee entitled to these protections, unless the hirer can prove the worker is an "independent contractor" under the standard, discussed first below. Following that is a summary of wage-and-hour rights, including wages for all hours worked, overtime, meal and rest periods, pay statement requirements, common exemptions to certain protections, and work-related expense requirements, and limitations on wage deductions.

Presumption of Employment and the Independent Contractor Defense

For purposes of coverage under the California Labor Code and wage orders, "any worker who performs work for a business is presumed to be an employee;" the hiring party has the burden of proving otherwise. *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 916. To prove a worker is not an employee, but instead an "independent contractor," the hiring company must show *all three* parts of the "ABC" test:

A. that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

B. that the worker performs work that is outside the usual course of the hiring entity's business; and

C. that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. Labor Code §2775; *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903.)

As the ABC test sets a high bar, most workers treated as "independent contractors" have likely been misclassified for purposes of workers' compensation coverage and denied key workplace rights discussed below.

What is Compensable Time and Minimum Wage

An employee "must be paid for 'all hours worked.'" *Troester v. Starbucks* (2018) 5 Cal. 5th 829, 840 (2018). "Hours worked" includes "the time during which an employee is subject to the control of an employer, and includes all of the time the employee is suffered or permitted to work, whether or not required to do so." Wage Order No. 4, §2(H).

All hours worked must be paid at least at the minimum wage. *Armenta v. Omose, Inc.* (2006) 135 Cal.App.4th 314. Employees who earn piece-rate pay must be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation. Labor Code §226.2. Failure to pay at least the minimum wage for each hour worked can lead to liquidated damages of two times minimum wage. Labor Code §1194.2(a).

Whether *on site* employer-controlled activities are compensable turns on whether activity is required, the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures. *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th1038, 1056. Applying those principles, the California Supreme Court found time spent in security checks may constitute work time. *Id.* at 1058. Similarly, meal periods may count as hours worked if the employee is not relieved of all duties for at least 30 minutes. *See Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App.4th 968. Training time may also be compensable, depending on several factors, such as whether the attendance is mandatory, outside regular working hours, directly related to the employee's duties, and whether the employee performs any productive work during training. *See Walling v. Portland Terminal Co.* (1947) 330 U.S. 148; *Moore v. C.R. England, Inc.,* 2011 WL 13189805, at *6 (C.D. Cal. Aug. 29, 2011); 29 C.F.R. §§785.27-785.3.

Time away from the employer's facilities may also constitute compensable work. For instance, "on call" or "stand by" time may be compensable if the employer maintains a degree of control over the employee such that the employee cannot effectively use the time for their own purposes. *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Travel time may also be compensable in certain circumstances, such as where an employer requires the employee to use a particular form of transport or does not allow the employees to commute on their own. *See Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 595. Job-related travel during a workday must also be paid. *See* 29 C.F.R. §§785.33-785.38. If work- related travel takes the employee out of the range of their ordinary commute, the travel time may become compensable. DLSE Opinion Letters 2002.02.21, 2003.04.22. However, "an ordinary commute from home to work and back that employees take on their own," is not compensable. *Morillion*, 22 Cal.4th at 595. Commuting while hauling necessary work tools, supplies, and equipment may be compensable if the volume of such materials and restrictions on the travel are such that the employee cannot make use of the time as they see fit. *Oliver v. Konica Minolta Bus. Sols. U.S.A., Inc.*, (2020) 51 Cal.App.5th 1, 25.

"Show up" or "reporting time" may also require compensation. If an employee is relieved of duties after working less than half of their scheduled shift, then that employee must be paid for at least half their shift, which must be a minimum of two hours and no more than four hours. Wage Order No. 4, §5. Having to call in or being reachable as the means for promptly reporting to work may trigger reporting time pay. *Ward v. Tilly's, Inc.* (2019) 31 Cal. App. 5th 1167; *Wood v. Marathon Ref. Logistics Servs. LLC*, 2020 WL 1877713, at *3 (N.D. Cal. Apr. 15, 2020).

Overtime Compensation

California law requires employers to pay overtime premium pay for all hours worked over 40 hours in a week and over eight hours in a day. Labor Code §510; Wage Order No. 4, §3. Alternative workweeks allow for workdays exceeding eight hours in a day. Wage Order No. 4, §3(B). Also, the overtime pay requirements may not apply to employees subject to a collective bargaining agreement ("CBA"), where the CBA provides for some premium wage rates for overtime worked and the regular hourly rate of pay is not less than 30 percent more than state minimum wage. Labor Code §514.

Overtime premium pay must equal at least one-and-a-half times the "regular rate of pay" or at least twice the regular rate of pay for hours over 12 in a day or over eight hours on the seventh consecutive day worked. Labor Code §510. For salaried workers, the regular rate is calculated by dividing the week's total compensation by 40 hours. Labor Code §515(d). The "regular rate of pay" includes all forms of non-discretionary compensation, not just the straight time rate, including adjustments to the straight time rate, such as shift differentials and per-hour value of any non-hourly compensation. *Alvarado v. Dart Container Corp. of Calif.*, 4 Cal.5th542, 554 (2018). Flat rate bonuses must be factored into "regular rate," *id.*, as does cash-in-lieu of health benefits. *Flores v. City of San Gabriel*, 824 F.3d 890, 895 (9th Cir. 2016). For employees paid a production-based bonus, commission and a piece rate, the overtime multiplier is only one-half or one times the regular instead of the one- and- a- half and two times used. *Lemm v. Ecolab Inc.* (2023) 87 Cal.App.5th 159, 170-171. *See also* DLSE Enforcement Policies & Interpretations Manual ("DLSE Manual"), §49.2, for other examples of overtime calculations.

Meal Periods

California requires employers to provide unpaid, half-hour meal periods before an employee works more than five hours and another before working more than 10 hours. Labor Code §512; Wage Order No. 4, §11. The employer must "relieve[] its employees of all duty, relinquish[] control over their activities and permit[] them a reasonable opportunity to take an uninterrupted 30-minute break, and ... not impede or discourage them from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1039.

If the employer fails to provide a lawful meal period, it must pay the employee one hour of pay each day a compliant meal period was not provided. Labor Code §226.7(c). The same regular rate of pay used for overtime applies for missed meal and rest period payments. *Ferra v. Loews Hollywood Hotel, LLC* (2021)11 Cal.5th 858, 878. The employer must record off-duty meal periods. Labor Code §226(a).

There are limited conditions under which an employee may agree to an "on duty" meal period or waive a meal-period. *See* Wage Order No. 4, §11(A). Also, a CBA may provide a carve out from meal period requirements for certain employees in construction, commercial driving, wholesale baking, motion picture and broadcasting, and utilities. *See* Labor Code §512(1)(c-g); 226.7. ▶

Rest Periods

California employers must also provide paid, off-duty rest periods of at least 10 minutes in length. Wage Order No. 4, §12. The breaks accrue every four hours or "major fraction" thereof (read as two or more hours). *Brinker*, 53 Cal.4th at 1029. If the total work shift is less than 3.5 hours, no rest period is required. Wage Order No. 4, §12(A).

A rest period is considered "hours worked" and must be paid. *Augustus v. ABM Security Services Inc.* (2016) 5 Cal.5th 257, 269. As with meal periods, the employee must be relieved of all duties and control during rest breaks. *Id.* at 272.

The employer must pay one hour of pay every day it fails to afford proper rest periods. Labor Code §226.7(c).

Pay Records

Employers must provide pay statements detailing, among other things, all rates of pay, deductions, and hours worked. Labor Code §226; Wage Order No. 4, §7(B). Employers must keep records for three years showing the employee's name, home address, gender, occupation, regular rate of pay, basis for salary or wage, hours worked, and wages paid. Wage Order No. 4, §7(A).

Timing of Payment

An employer must pay all accrued wages at least twice a month: labor performed the 1st through 15th of the month must be paid by the 26th of the month; labor performed the 16th through the end of the month must be paid by the 10th of the next month. Labor Code §205(a). "Wages" for section 204 purposes include: "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, *commission basis*, or other method of calculation." *Peabody v. Time Warner Cable, Inc.* (2014) 59 Cal.4th 662, 668.

Exemptions to Wage & Hour Requirements

There are many exemptions that exclude certain employees from some of the workplace protections previously discussed.

The most common are the so-called "White Collar" exemptions to California's overtime, meal, and rest requirements. These exemptions cover "Executives," "Administrators," and "Professionals" who meet both a "salary" and a "duties" test.

The salary test requires payment of a "monthly salary equivalent to no less than two times the state minimum wage for full-time employment." Labor Code §515(c). A "salary" is a predetermined amount paid on a regular basis. DLSE Manual, §§51.6. et seq. An employee is not "salaried" if pay is prorated for work less than full time (40 hours a week); pay is reduced for partial day absences; deductions are made based on quantity or quality of work performed; and deductions made because of absences caused by employer. *Id.*

To meet the "duties" test, the employer must show the employee is "primarily engaged" (50% of the time) in executive, administrative, or professional duties. Labor Code §515.

Executive Exemption

An "executive" is one who: manages a distinct unit, *see* 29 C.F.R. §§541.102, 541.104; directs the work of two or more full time employees, *see* 29 C.F.R. §541.105; has hire and fire authority, *see* 29 C.F.R. §541.106; and "customarily and regularly exercises discretion and independent judgment," *see* 29 C.F.R. §541.107. Wage Order No. 4, §1(A)(1). The term "exercise of discretion and independent judgment" under the executive exemption "implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and *with respect to matters of significance*." *UPS Wage & Hour Cases* (2010)190 Cal.App.4th 1001, 2024.

A bona fide executive must also spend at least 50 percent of their time on managerial duties, which include: interviewing, selecting, training employees; setting pay rates and work hours; directing work of subordinates; keeping production records of subordinates; evaluating job performance; resolving employee complaints and grievances; employee discipline; planning work, distributing work, and determining work methods; controlling flow/distribution of merchandise, materials, supplies; providing for safety of employees and property. *Heyen v. Safeway Inc*. (2013) 216 Cal.App. 4th 795, 819, citing 29 C.F.R. §541.102(b). "Work of the same kind performed by a supervisor's nonexempt employees generally is 'nonexempt,' even when that work is performed by the supervisor. If such work takes up a large part of a supervisor's time, the supervisor likely is a 'nonexempt' employee." *Id.* at 822.

Positions commonly misclassified as "executive" include: "working" or "straw" managers who perform regularly the same work as their subordinates, 29 C.F.R. §541.115; and assistant managers who are not in charge of a distinct unit. 29 C.F.R. §§541.105, 541.116.

Administrative Exemption

An "administrative" employee is one who: performs non-menial work "directly ▶

Alameda-Contra Costa
TRIAL LAWYERS' ASSOCIATION

Invites you to attend our
Fall Cocktail Reception
with Special Guest
Contra Costa County Trial Judge of the Year

Mary Ann O'Malley

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Tuesday, September 9, 2025
5:30 – 7:30 pm
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Please join us for wine, beer, soft drinks and hors d'oeuvres
Please RSVP by Friday, September 5, 2025 to Mariana Harris at ACCTrialLawyers@gmail.com or 925-257-4214

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related to management policies or general business operations" or as a school administrator, *see* 29 C.F.R. §§541.202-541.205; "customarily and regularly exercises discretion and independent judgment," *see* 29 C.F.R. §541.207; and who functions as an executive or administrative assistant or "staff employee" or carries out special assignments, *see* 29 C.F.R. §541.201. Wage Order No. 4, §1(A)(2).

A bona fide administrator must also spend at least 50 percent of their time on administrative duties, which include advising management; business planning and research; negotiating and/or representing the company; purchasing; and promoting sales generally (but individual sales work not ordinarily exempt). Administrative work must be both "qualitatively administrative" and "quantitatively, it must be of substantial importance to the management or operations of the business." *Harris v. Superior Court* (2011) 53 Cal.4th 170, 182. A true administrative employee "engages in running the business itself or determining its overall course or policies." *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1125 (9th Cir. 2002), internal quotes omitted.

Examples of employees misclassified as administrative: claims adjusters, *Bell v. Farmers Insurance Exchange* (2004)115 Cal. App.4th 715; television sports anchor/reporter. *Nordquist v. McGraw-Hill Broadcasting Co.*, 32 Cal.App.4th 555, 572-73; loan officers, *Casas v. Conseco Fin. Corp.*, 2002 WL 507059 (D. Minn. 2002); escrow closers, *Reich v. Chicago Title Ins. Co.*, 853 F.Supp. 1325 (D. Kan. 1994); loan underwriters, *Davis v. J.P. Morgan Chase & Co.*, 587 F.3d 529, 535 (2nd Cir. 2010); probation officers, *Bratt v. County of Los Angeles*, 912 F.2d 1066, 1070 (9th Cir. 1990); insider salespersons. *Martin v. Cooper Electric Supply Co.*, 940 F.2d 896 (3rd Cir. 1991), *Donovan v. Rockwell Tire & Fuel, Inc.*, 26 Wage & Hour Cas. (BNA) 726 (M.D.N.C. 1982).

Professional Exemption

A "professional" includes license holders in law, medicine, dentistry, optometry, architecture, engineering, teaching, and accounting. "Professional" also includes those in "learned or artistic profession," defined as someone engaged in work that: requires advanced, specialized knowledge or instruction and study, *see* 29 C.F.R. §541.301(a)-(d); is original and creative in an artistic field, *see* 29 C.F.R. §541.302; or is "intellectual and varied in character," *see* 29 C.F.R. §541.306. Wage Order No. 4, §1(A)(3). The professional exemption does not include many types of nurses and pharmacists. *See id.,* §1(A)(3)(f), (g).

The professional exemption may apply to "professionals" who have not yet obtained a license or who perform low-level professional duties. *See Zelasko-Barrett v. Brayton-Purcell, LLP* (2011) 198 Cal.App.4th582 (law clerk waiting for bar exam results); *Henig v. Quinn Emanuel Urquhart & Sullivan, LLP*, 151 F.Supp.3d 460 (2015) (contract attorney's document review work). *See also Campbell v. PriceWaterhouseCoopers, LLP*, 642 F.3d 820 (9th Cir. 2011) (triable issue of fact whether unlicensed accountants were exempt under the professional or administrative exemption). However, paralegals/legal assistants are typically not professionals because an advanced degree is not a standard prerequisite for most paralegal/legal assistant jobs. *See* 29 C.F.R. §541.301(e)(7); WH Admin. Op. FLSA2005-9, 2005 WL 330608 (Jan. 7, 2005).

Computer Professional

The computer professional exemption applies to highly paid, skilled computer systems analysts, programmers and software developers, who are: "primarily engaged" in "intellectual or creative work" that requires "exercise of discretion and independent judgment;" "highly skilled" and "proficient in the theoretical and practical application of highly specialized information to computer systems, analysis, programming, and software engineering;" and earn a minimum hourly rate of $56.97 or an annual salary of $118,657.43 in 2025 (adjusted yearly on CPI). *See* Labor Code §515.5; Wage Order No. 4, §1(A)3(g)(1). https://www.dir.ca.gov/OPRL/ComputerSoftware.htm.

Other Exemptions

Outside salespeople are exempt from all wage order requirements, including overtime, minimum wage, and meal and rest breaks. The exemption applies if the employee "customarily and regularly works ... more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities." Labor Code §1171; Wage Order No. 4, §2(N). The outside work must be "directly involved in 'selling ... items, or obtaining orders or contracts.'" *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 797.

Commission salespeople are exempt if more than 50 percent of their total compensation comes from commission sales and they earn more than 1.5 times the minimum wage. Wage Order No. 4, §3(C). Exempt commission salespeople "must be involved principally in selling a product or service, not making the product or rendering the service," and "the amount of their compensation must be a percent of the price of the product or service." *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 804.

The Motor Carrier exemption carves out truck drivers whose hours of service are regulated by the United States Department of Transportation, under federal regulations, 49 C.F.R. §§395.1-395.13. These regulations apply to trucks with gross vehicle rating in excess of 10,000 pounds and that travel in interstate commerce. Wage Order No. 4, §3(I).

Other miscellaneous exemptions include ambulance drivers and attendants on 24-hour duty; broadcasting industry announcers; news editors; chief engineers in small towns; camp student employees and counselors; irrigators in agricultural occupations; motion picture industry extra players; motion picture projectionists; and ski industry employees.

Reimbursement for Work-Related Expenses

An employee is entitled to reimbursement for work related expenses under Labor Code section 2802, which provides: "An employee shall indemnify his employee for all that the employee necessarily expends or loses in direct consequences of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful."

Examples of business expenses employer must pay for: vehicle use (gas, insurance, repair, maintenance, depreciation), other travel, tools, business promotion items, computers, cell phones, tablets, insurance. *See, e.g., Gattuso v. Harte–Hanks* (2007) 42 Cal.4th 554, 568, 67 Cal. Rptr.3d 468 (vehicle expenses); *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (cell phones).

Wrongful Deductions from Wages

Accrued wages are a form of property that belongs to the wage earner. *Cortez v. Purolator Air Filtration Prods. Co.* (2000) 23 Cal.4th 163, 168. Labor Code sections 221-24 delimit what employers can withhold from accrued wages. Employer cannot collect or receive wages already paid the employee. An employer cannot take deductions from wages for cash shortages, breakage, loss of equipment, and other business losses that may result from employer's simple negligence. *See Kerr's Catering v. DIR* (1962) 57 Cal.2d 319; *Barnhill v. Saunders* (1981) 125 Cal.App.3d 1; *Quillian v. Lion Oil,* 96 Cal.App.3d 156 (1979). See also *Prachasaioradej v. Ralphs Grocery Co.* (2004) 42 Cal.4th 217 (calculation of profit-based bonus lawful, even though it incorporated charge for workers' compensation costs and cash and merchandise shortages). Also charge backs on commissions for customer returns may be illegal if employer has already realized revenue from the sale or if the employer cannot attribute the return to a specific employee. *See Sciborski v. Pac. Bell Dir.*, (2012) 205 Cal.App.4th 1152; *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109.

Paid Time Off

An employer doesn't have to provide paid vacation, but if it does, then vacation pay is treated as a wage. Labor Code §227.3. Because vacation is a wage, once earned it cannot be forfeited. Thus, vacation plans may not have a "use it or lose it" provision. However, an employer can cap how much an employee can accumulate.

Vacation pay must accrue proportional to the amount of work time an employee puts in (i.e., vacation accrues each pay period). *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 778–784. Employers cannot set an arbitrary date or accelerated earning period, which would allow for a disproportionate rate of earnings (i.e., cannot grant vacation in lump sum). Also, an employer cannot require an employee to work an entire year for her vacation pay to vest.

Paid time off ("PTO") is treated like vacation if there are no conditions placed on when it can be used. *See* DLSE Enforcement Policies & Interpretations Manual, §15.1.12.

Most employers must provide at least three paid sick days a year, or one hour for every 30 hours worked. Labor Code §245. An employee must become eligible for paid sick time after 90 days on the job. The sick leave must be tracked on pay stubs. An employee can carry over unused sick leave year to year, but the employer can cap the amount for carryover to 48 hours. Paid sick leave is not like an accrued wage and thus there is no entitlement to cash out unused sick leave at time of termination. The statutory rights to paid sick leave may not apply where there is a CBA. ◆



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[1]There are 17 different wage orders, organized by industries. Most of the substantive provisions are the same throughout the wage orders. All cites herein are to Wage Order No. 4, which applies to workers in "professional" offices and many other office settings.

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Avoiding Common Mistakes When Handling California Tort Claims Act Cases

by Shaana A. Rahman

Cases against public entities follow a distinct set of rules. Although there is nothing mystical about pursuing cases against a public entity, if you don't regularly handle these types of cases you need to understand the potential traps for the unwary or, at least, know when to reach out to someone for help. I frequently get calls from lawyers handling their first public entity case who are caught off guard by the ubiquitous claim denial or realization that their claim was filed after the deadline, either due to a misunderstanding of the claims filing deadline or not identifying a potential public entity claim until it's too late. Early errors in public entity cases can be fatal to a plaintiff's case or seriously impede a favorable result. Luckily, almost all of these errors can be avoided by careful planning, a complete understanding of the Tort Claims Act and having resources available if you get stuck.

An Overview of the Tort Claims Act[1]

The Tort Claims Act of 1963 (§§810-996; the Act)[2] was enacted to "restore sovereign immunity in California except as provided in the [Act] or other statute," following the California Supreme Court's abolishment of the general rule of governmental immunity in *Muskopf v. Corning Hosp. Dist.* (1961) 55 Cal.2d 211. (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838, *Lipman v. Brisbane Elementary Sch. Dist.* (1961) 55 Cal.2d 224.) The Act overturned *Muskopf, supra*, and eliminated all judicially devised forms of governmental liability. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920. 932; *Hoff v. Vacaville Unified Sch. Dist.* (1998) 19 Cal.4th 925, 932; *Creason v. State Dep't of Health Servs.* (1998) 18 Cal.4th 623, 630.) As a result, there is no common law tort liability for public entities in California; liability must be based on statute. (Government Code §815(a); *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897, citing 815(a).) Thus, you cannot sue a public entity for common law negligence.[3] (*Eastburn v. Regional Fire Protection Auth.* (2003) 31 Cal.4th 1175; *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1132.) Government Code sections 810 through 895.8 outline the types of actions that can be commenced against a public entity as well as the limitations, immunities and defenses available to public entities. For instance, a public entity is not liable for exemplary damages awarded pursuant to Civil Code section 3294. (Gov. Code §818.) While the framework is one of a narrow field of liability of public entities, it is supposed to be balanced with the necessary duties a public entity owes to the public. In reality, as government entities get the benefit of immunities and defenses that are not available to other defendants these cases can present a unique set of challenges for plaintiffs.

Spotting a Potential Claim

It can be easy to miss a potential public entity claim without taking a step back. For instance, perhaps you take a case where your client's vehicle is struck in an intersection controlled by stop signs. The police report confirms the other driver ran the stop sign. At first blush, this seems like a standard personal injury case. However, a year later in deposition the defendant driver testifies he didn't see the stop sign because an overgrown tree was completely obscuring the stop sign. The driver's lawyer then shares photos taken of the stop sign, a list of prior stop sign violation collisions, and several complaints to the city about the obscured stop sign. Your first thought is — did I miss this? Unfortunately, the answer is yes. The flip side of this scenario is getting a call from a potential client with horrific injuries who insists the collision was the city's fault. You sign it up, sight unseen, and the case sits until it's time to file the 910 claim. By the time you get the denial and need to start drafting the complaint, you realize you don't have any actual theory of recovery or actual evidence.

Early investigation is key to both not missing a potential government claim and ensuring you have the evidence you need to successfully litigate the case. It is good practice to screen your personal injury cases for a potential public entity claim. This may involve an early inspection, interviewing witnesses and investigation into prior incidents. One of the best ways to get evidence of a public entity's liability is by requesting documents through the California Public Records Act. (Government Code §7920.530 *et seq*.) Most entities have convenient, free online portals to make these requests. Another free tool is the entity's own website which can provide information on various construction projects, council meetings, and policies and procedures. You can also identify a potential public entity defendant by reviewing the registry of public agencies available on the Secretary of State's website or the county clerk's website. (See, Government Code §53051 *et seq*.) If you are evaluating a collision case, the California Highway Patrol collects data on collisions. The CHP database is called the Statewide Integrated Traffic System (SWITRS). You can request the CHP provide you with a list of collisions at a particular location, specifying the time period. The SWITRS report will show basic information, including the potential cause of the collision. You can use this information to uncover a history of similar collisions at an intersection. If this history corresponds with complaints to the entity about the particular danger, that may be indicative of a potential failure on the part of the entity.

If you uncover physical evidence during your investigation, such as the existence of surveillance footage, you will want to send a letter requesting that the evidence be preserved. Once you have some evidence tying the entity to liability, you can evaluate the viability of the claim against the defenses and immunities provided in the Government Code. The next step is complying with the claim filing procedures.

Filing the Claim

The first step to filing a timely claim is identifying which time limit applies to your case. Claims for personal injury, personal property damage and injury to crops must be filed within six months after a cause of action accrues.[4] All other claims are subject to the one-year deadline. (Government Code §911.2 *et seq* - 915 *et seq*.) These time limits are mandatory, and the Act does not provide for tolling or extending the time limits for a claimant's minority or disability. The next step is to identify if the public entity has a specific claim form and whether there is a fee required with the filing.

All claims must comply with the requirements of Government Code §910, which provides a list of all information required. You are not limited to the confines of a claim form and can, and should, provide an addendum to the claim to fully outline your evidence and basis for liability. A common mistake is providing too little information within the claim. While the claim does not have to contain every fact involved, the statute requires that any claim presented should "substantially comply" with §910. While minor defects in the contents of the claim should not invalidate the claim, as more and more public entities use third party administrators to handle the claims process, the number of claims being returned with "notices of insufficiency" is rising. This makes it a good practice to identify all theories for recovery you intend to assert in the complaint in the claim itself, includ- ▶

ing all allegations regarding employees of the public entity. (*Phillips v. Desert Hosp. Dist*. (1989) 49 Cal.3d 699, 706-707.) If you receive a notice of insufficiency or need to amend the claim, you may do so, but §910.6(a) requires that the amended claim relate to "the same transaction or occurrence which gave rise to the original claim." (Gov. Code §910.6.)

Once completed, a claim form must be presented to the proper public entity. This may be done by mail, in-person or, in some cases, via electronic submission. (Gov. Code §§915, 915.2 *et seq*.) Since the claimant has the burden to establish that the claim was presented, it is wise to request and obtain a conformed copy of the claim. After the claim is presented, the public entity has 45 days to respond to a claim unless this time is extended through a stipulation or amendment of the claim. The entity can accept the claim, reject the claim, accept it in part and reject it in part, compromise the claim, or take no action, allowing the claim to be denied under operation of law. (Govt. Code §§912.4(c), 912.6(a), 913; 911.3(b).) If a timely claim is not accepted or compromised, a claimant has six months from the personal delivery or mailing of the written notice of rejection of the claim, or two years from the accrual of the cause of action if the entity does not provide written notice of rejection, to file suit. (Govt. Code §§945 *et seq*.)

Missing the Claim Filing Deadline

If a claim that is subject to the six-month claim presentation required is not presented within that period, the Act details late claim procedures, which include applying to the entity for leave to present the claim after the six-month period. This application must be made within a reasonable time, not to exceed one year of the accrual of the cause of action. Any such application must state the reason for the delay and include a copy of the proposed claim. (Gov. Code §911.4(b).) The public entity can grant or deny the application. The grounds for granting the application include: mistake, inadvertence, surprise or excusable neglect, physical or mental incapacity, minority, and death. (Govt. Code §§911.6(b).) If the application is denied, the claimant can file a petition for relief with the superior court. If the court denies the petition, the claimant can bring a post judgment motion or appeal. If the court grants the petition, claimant must file suit within 30 days after the court's order granting relief from the claim filing requirements is entered. (Govt. Code §946.6(f).)

If a claim is filed late, without a request for permission filed by the claimant, the public entity must send a notice to the claimant indicating that the claim is late within 45 days of the presentation of the claim. If no such notice is given, the public entity waives the untimely defense. (Gov. Code§§911.3(a), 911.3(b).)

Mistakes to Avoid in Pleading

Taking the time to draft a thorough claim will aid in avoiding pleading errors that can open the door for a demurrer. The facts and basis for each cause of action in the complaint must reflect those set out in the claim. If the complaint goes far afield of the contents of the claim, that could give rise to a demurrer. Another way to avoid demurrer is to plead with specificity as to the specific statute applicable to a public entity. Here again, similar to the claim, it benefits you to reveal as many facts as possible and theories you have to meet the threshold for statutory liability of the public entity. Additionally, the complaint should provide facts to establish that the cause of action is outside of any statutory immunity that is available to the public entity.

Advising Your Client of the Risks of Litigation

Litigating cases against public entities come with their unique set of risks. It is fairly common for the entity to file an early Motion for Summary Judgment in these cases, as a routine matter of course. This very quickly increases the time and expense associated with these cases. As it is likely that you will have to respond to an MSJ, it is important to understand that a defendant in a Tort Claims Act may recover both its fees and costs if the defendant can show that plaintiff either did not bring her case with reasonable cause or that plaintiff did not bring her case in good faith. (*Carroll v. State of California* (1990) 217 Cal. App. 3d 134, 141; *Code Civ. Pro*. §1038(a); see also *Code Civ. Pro*. §1021.5-7.) Recovery pursuant to section 1038 can only be sought if the public entity prevails on summary judgment, motion for judgment pursuant to CCP 631.8, motion for nonsuit, or motion for directed verdict. If the court determines that the proceeding was not brought in good faith and with reasonable cause, the defendant is entitled to defense costs, which include "reasonable attorneys' fees," as well as prevailing party costs. (*Code Civ. Pro*. §1038(a).)[5] In interpreting "reasonable cause," courts have turned to the definition of "probable cause" in the malicious prosecution context, defining both as an objective standard as to whether "any reasonable attorney would have thought the claim tenable" on the basis of facts known to plaintiff when he or she filed or maintained the action. (*Carroll, supra*, 217 Cal.App. 3d, 141; *Knight v. City of Capitola* (1992) 4 Cal.App.4th - 918, 932.) However, it is axiomatic that a "defendant may not recover section 1038 costs simply because it won a summary judgment…victory does not per se indicate lack of reasonable cause." (*Kobzoff v. Los Angeles County* (1998) 19 Cal.4th 851, 856.) The reasonable cause standard has been determined to require "some articulable fact or facts to conclude that a particular person or entity should be initially included in the lawsuit." (*Carroll, supra*, 217 Cal. App.3d 134, 142.)

A determination of "good faith" "or its absence, involves a factual inquiry into the plaintiff's subjective state of mind" and is a question of fact in each case. (*Knight, supra*, 4 Cal.App. 4th 918, 931; *Carroll, Id*., citing to *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 495; and *Critz v. Farmers Ins. Group* (1964) 230 Cal.App.2d 788, 796.) Thus, implied in such a determination is that the complaint was filed in "bad faith" or, as defined by Black's Law Dictionary, the opposite of "good faith" and such conduct that is "not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." (*Brenton R. Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 34, citing to Black's Law Dictionary, 5th Ed. 1979, p.127.) If the public entity prevails on MSJ or at trial, they are entitled to bring forth a 1038 motion requesting fees and costs. As your client becomes responsible for paying these fees and costs if the motion is granted it is good practice to outline for your client, well in advance of the MSJ or trial, the potential exposure they could have if the case is not successful.

Conclusion

Litigating public entity cases is important to not only hold entities responsible for the damage done to your client, but in many cases can lead the entity to change unsafe or unsavory practices creating positive change for everyone. The responsibility to handle these cases knowledgably and professionally is great as failing to do so can harm your client and other members of the public. ◆



— Shaana A. Rahman is the owner and founder of Rahman Law PC. Ms. Rahman is an accomplished and experienced civil trial attorney, and represents people with personal injury and wrongful death cases. Rahman Law PC has offices in San Francisco and Paso Robles.

[1]Federal tort claims are governed by 28 U.S.C. §§1346(b), 2401 and 2680.

[2]The Act is now commonly referred to as the Government Claims Act.

[3]Gov. Code §815.2 provides that under certain circumstances, a public entity can be liable for the negligence of its employees.

[4]Some actions, such as medical malpractice claims, accrue only when the injury is discovered (Code of Civil Procedure §340.5.)

[5]California Senate Bill No. 577 is currently pending, which would allow such motion in the event of the granting of a judgment on the pleadings; this bill would also allow for judgment for fees and costs to be rendered against the parties or their attorneys.

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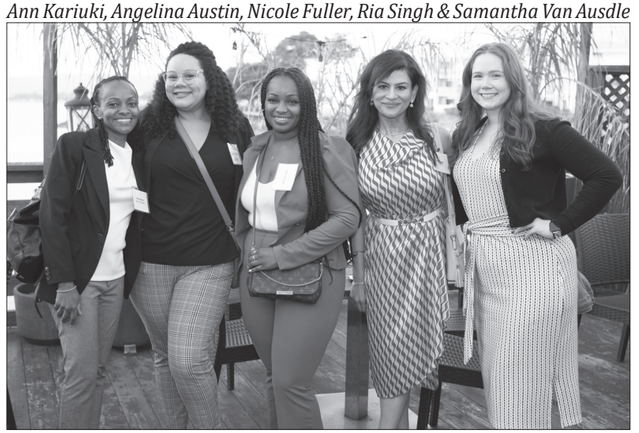

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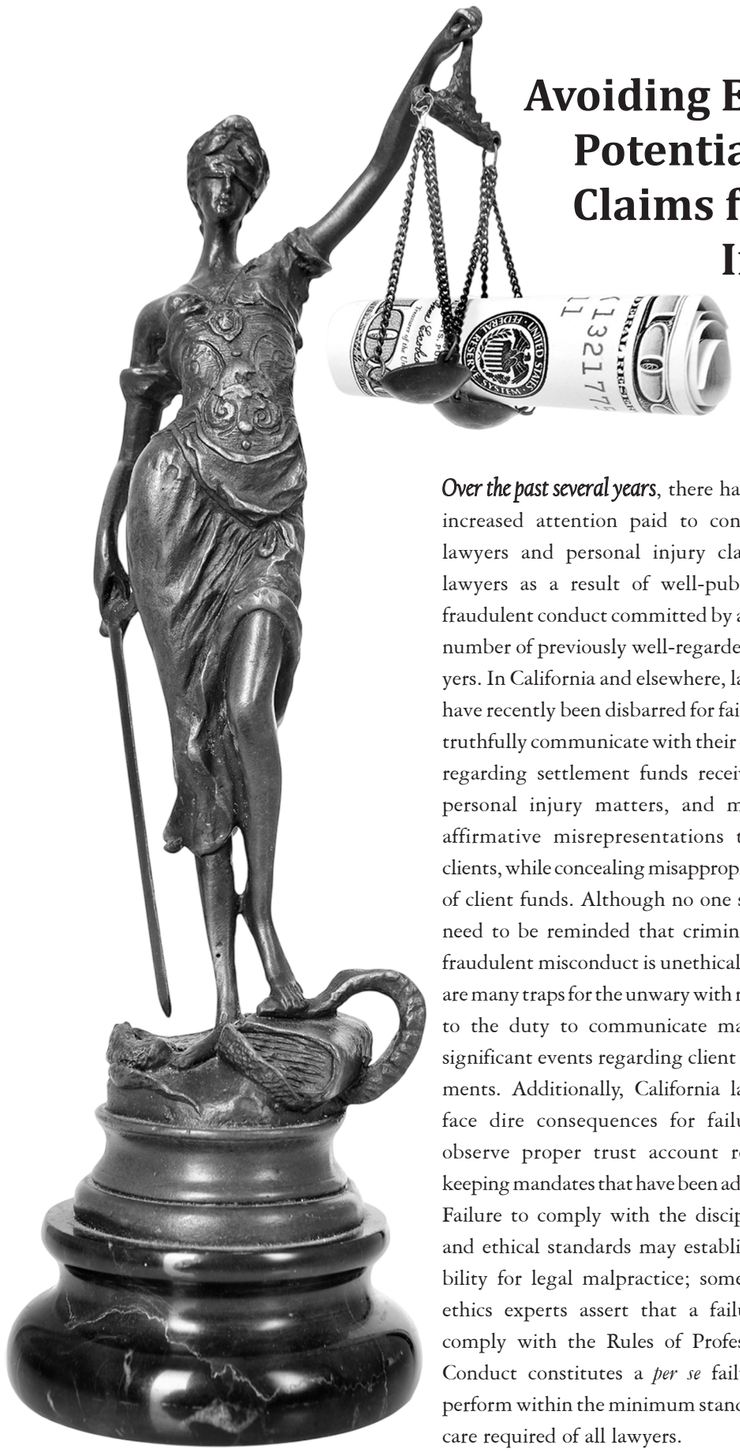

Avoiding Ethical Violations and Potential Legal Mapractice Claims from Your Personal Injury Client

by Ellen Pansky

Over the past several years, there has been increased attention paid to consumer lawyers and personal injury claimant lawyers as a result of well-publicized fraudulent conduct committed by a small number of previously well-regarded lawyers. In California and elsewhere, lawyers have recently been disbarred for failing to truthfully communicate with their clients regarding settlement funds received in personal injury matters, and making affirmative misrepresentations to the clients, while concealing misappropriation of client funds. Although no one should need to be reminded that criminal and fraudulent misconduct is unethical, there are many traps for the unwary with respect to the duty to communicate material, significant events regarding client settlements. Additionally, California lawyers face dire consequences for failure to observe proper trust account record-keeping mandates that have been adopted. Failure to comply with the disciplinary and ethical standards may establish liability for legal malpractice; some legal ethics experts assert that a failure to comply with the Rules of Professional Conduct constitutes a *per se* failure to perform within the minimum standard of care required of all lawyers.

Duty to Communicate with Clients

There are specific duties owed by lawyers to their clients with respect to communicating developments in the client's matter. The duty to communicate is set forth in both the California Rules of Professional Conduct (CRPC) and in the State Bar Act. Business & Profession Code §6068(m) requires every lawyer "(t)o respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." CRPC rule 1.4 requires lawyers to "keep the client reasonably informed about significant developments relating to the representation," including providing documents in response to the client's request. Of course, the lawyer must also reasonably consult with the client to accomplish the client's goals in the matter.

CRPC rule 1.4.1 mandates that lawyers promptly communicate to the client, "all amounts, terms and conditions of any written offer of settlement made to the client" in non-criminal matters. The official comment to rule 1.4.1 makes it clear that oral offers of settlement may also be required under rule 1.4.1, if the offer is a "significant development." ▶

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While the rules are seemingly clear, in operation the duty to communicate can be nuanced. For example, if the opposing party makes a patently unreasonable settlement offer which no competent claimant's lawyer would accept, can it be an ethical violation to refrain from forwarding that offer to the client? What is the definition of "prompt" in connection with the duty to communicate settlement offers to clients? If the lawyer communicates the amount of a settlement offered to the client but fails to communicate other terms and conditions of a written settlement offer, would that be considered a failure to comply with the ethical duty to communicate settlement offers to a client? It is always safer to communicate all settlement offers to the client, including significant terms and conditions, at the earliest opportunity following receipt of the settlement offer. If a lawyer fails to do so, there could be exposure to a claim that a breach of the duty to communicate with the client has occurred.

Client Trust Accounting Duties

With a few notable exceptions, CRPC rule 1.15 requires all funds in which a client or a third party has an interest, which are received by lawyers in connection with legal representation, are "trust funds," and must be deposited in a statutorily compliant client trust account ("CTA"). Obviously, this includes funds of others that are being held for later disbursement, and settlement funds including personal injury recoveries. Contrary to the former California rule, commencing in 2018, "trust funds" now include advance fees received from clients prior to being earned by the lawyer. A lawyer is precluded from holding personal funds in a CTA, and must distribute earned fees as soon as they become reasonably ascertainable. Retaining earned fees and the lawyer's personal funds in a CTA constitutes commingling, which is a disciplinary offense. Under limited circumstances, where there is specific disclosure and written client consent, flat rate fees may be deposited in the lawyer's personal or business account, rather than in a CTA. The CRPC now explicitly *prohibits* fees designated as "non-refundable," "earned upon receipt," or similar descriptions, except for "true retainer" fees. A true retainer means that the fee is separate and apart from the payment for legal services, and cannot be applied to any portion of fees for legal services.

Effective December 1, 2022, the State Bar and the California Supreme Court adopted new rules governing the handling of 'Interest On Lawyers' Trust Accounts ("IOLTA") accounts, in which financial institutions transfer the interest earned on such accounts to the State Bar for the funding of legal services programs. IOLTA accounts are, by definition, required when the amount being held for the client's benefit is either small in amount, or being held for a brief time. See, Bus. & Prof. Code §§6091.2, 6211, 6212, and 6213.6. The Client Trust Account Protection Program, known as CTAPP, was adopted for the stated purpose of assisting lawyers to accurately establish, manage, monitor and report CTA activity, including non-IOLTA interest-bearing trust accounts. With few exceptions, all California lawyers are required to annually report to the State Bar fine details regarding any and all CTA activity, even if the lawyer is not personally responsible for the actual establishment and management of the trust account.

The California State Bar publishes guidance for lawyers in connection with proper trust account handling procedures: IOLTA Guidelines for Attorneys. In part, the State Bar guidance states: "California Rule of Court 9.8.5 and State Bar Rules, title 2, division 1, rule 2.5 require licensees to register annually all CTAs, including IOLTA and individual interest-bearing accounts, that were open at any point during the reporting period, complete a self-assessment, and certify compliance with the rules of safekeeping."

Some of the key points include:

• Every lawyer must complete the Client Trust Account Annual Self-Assessment, which is part of the annual renewal of membership in the California State Bar. Failure to do so will result in the attorney being placed on involuntary inactive status, making the lawyer ineligible to practice law. If the lawyer continues to practice while ineligible, the State Bar may institute an investigation and/or disciplinary charges based on Unauthorized Practice of Law (UPL), if the attorney has practiced law while on ineligible status.

• Failure to register as well as failure to report changes in any CTA may result in a State Bar investigation and the possibility of an accusation that the CTAPP requirements have been violated. This includes the duty to report multiple trust accounts, including both IOLTA and non-IOLTA trust accounts; failing to report the opening of a new trust account within 30 days; and failing to report the closure of a previously used CTA. Failure to report any of these events, if brought to the attention of the State Bar, will likely result in a State Bar inquiry.

The State Bar has adopted new rules permitting it to audit lawyer CTAs. The State Bar can require the lawyer to pay for the audit by an accounting professional. The audit process could require the lawyer to provide information as to all CTA activity for a period of many months, plus give rise to complex issues relating to client confidentiality, attorney-client privilege, and the client's constitutional right to financial privacy. Needless to say, it behooves lawyers to maintain strict compliance with CTA bookkeeping requirements, and stay in compliance with the mandatory reporting requirements.

By statute, financial institutions have an affirmative duty to notify the State Bar *every time* a CTA goes into overdraft, and if a CTA check is paid on insufficient funds (NSF) (i.e., whether or not the CTA check "bounces"). Any of these occurrences will result in a State Bar inquiry, perhaps trigger an audit, and in addition, create possible exposure for civil liability to the payee of the returned check, whether the payee is a client or a third-party payee.

Conclusion

All lawyers — and particularly personal injury plaintiff lawyers — must be vigilant with respect to communicating settlement offers, properly documenting the client's rejection or acceptance of settlement offers, acting promptly with respect to not just resolving the client's case but also promptly finalizing settlements. Both the standard of care and the ethical rules require lawyers to act reasonably promptly; to safeguard client funds; to avoid delaying the distribution of trust funds to clients and to third parties such as valid lienholders; and to maintain strict oversight over all client trust account procedures. In a high-volume personal injury practice, and for the solo or small firm legal practitioner who may not have deep administrative support, complying with the rules can be daunting. However, the consequences of failing to do so can be dangerous and extreme. Although the recordkeeping and bookkeeping requirements may not seem like the highest priority in a busy law practice, neglecting the mandatory CTA recordkeeping, adherence to the esoteric mandatory State Bar rules is not worth the risk of exposure for civil liability, or heaven forbid, disciplinary action. ◆



— Ellen A. Pansky is the founder of Pansky Markle Attorneys at Law, South Pasadena, California, specializing in State Bar disciplinary defense and Bar admissions, legal ethics consultations, professional liability litigation and expert testimony.

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2. Focus the camera on the QR code by gently tapping the code.

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Our facebook person is Ann Kariuki (ann@lawofficesofamk.com) and here is the QR code to our page.

Our Instagram person is Jeena Jiampetti (jeena@benefitslaw.com) and here is the QR code to our feed.

Our LinkedIn person is Sophia Achermann (sophia@thefafirm.com) and here is the QR code for our account.

Our Products and SignUp person is Mariana Harris (acctriallawyers@gmail.com) and here are the QR codes for those pages.

Don't Miss the Workers' Compensation Case
When an Injury Claim Walks through Your Door

by Alicia Villanueva and Christopher Viadro

As practitioners of both personal injury and workers' compensation claims, we are always on the lookout for a personal injury case when something billed as a workers' compensation case walks through the door. The opposite is true as well — when we are presented with a personal injury case, we also assess whether a companion workers' compensation claim exists. In most instances, the latter assessment can typically be made simply by asking if someone was injured at work. That said, some workers' compensation claims do not present so clearly.

Suppose a worker is severely injured ***in her own car*** *and* ***on the way*** *to work. Your memory tells you there is a general rule barring workers' compensation claims when one is injured during their commute to work. Suppose you learn that her normal work hours are 9:00 a.m. to 5:00 p.m. and that the injury happened at 4 a.m. because her supervisor had asked her to come to work early for a special project. Are these facts significant? Is she entitled to workers' compensation benefits even though she is injured during her commute? In this article, we address these questions along with other less-than-obvious ways in which an injury may fall within the workers' compensation system. Understanding these atypical workers' compensation claims will keep the personal injury practitioner out of trouble for failing to identify a workers' compensation claim, which may coexist alongside a personal injury case.*

General Workers' Compensation Eligibility Requirements

Before doing so, some general background on workers' compensation eligibility criteria is a helpful foundation. To qualify for workers' compensation benefits in California, an individual's injury must both arise out of the employment ("AOE") and occur during the course of employment ("COE"). An injury arises out of employment "when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." (*Kimbol v. IAC* (1916) 173 Cal. 351, 353.) For an injury to arise out of employment, one must determine "whether a particular act is reasonably contemplated by the employment[,] the nature of the act, the nature of the employment, the custom and usage of a particular employment, the terms of the contract of employment, and perhaps other factors should be considered." (*LaTourette v. WCAB* (1998) 17 Cal.4th 644, 651.) Simply put, there must be a causal connection between the injury and the employment.

"Course of employment" refers to the time, place and circumstances of the injury. In other words, when and where did the injury happen? An employee is "in the course of employment" when he/she:

- "[D]oes those reasonable things which his[/]her] contract with his[/her] employment expressly or impliedly permits him[/her] to do." (*Maher v. WCAB* (1983) 33 Cal.3d 729 citing *State Comp. Ins. Fund v. Indus. Acc. Com.* (1924) 194 Cal. 28, 33.)
- Is "performing a duty imposed upon him[/her] by his[her] employer and one necessary to perform before the terms of the contract [are] mutually satisfied." (Id.)
- Is engaged in "such service as the employee is expected to render, when it occurs within the period of employment, at a place where he may reasonably be for that purpose, and while he is engaged in fulfilling his duties or in doing something necessarily incident thereto." (*Griffin v. IAC.*, (1937) 19 Cal. App. 2d 727.) ▶

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Going and Coming Rule

Returning to our opening hypothetical, an injury that happens while one is on the way to or from work generally does not give rise to a workers' compensation claim; such injuries do not typically arise out of or in the course of employment. This general rule is called the "going and coming rule." However, as addressed below, there are a myriad of exceptions to the going and coming rule.

Going and Coming Rule Exceptions

Special Mission Doctrine. The special mission doctrine (also called the "special errand" doctrine) is an exception to the going and coming rule. It applies when the employer inserts control over the employee's regular course of going to and from the workplace and the employee sustains an injury. The special mission must be (1) extraordinary in comparison to the employee's normal duties, (2) within the course of employment, and (3) at the implied or express request of the employer. Workers' compensation claims were permitted in the following examples through application of the special mission exception to the Going and Coming Rule:

- A supervisor requested an employee to return to a store at night to unlock the door and let in an electrician. The employee died in a car accident when returning home from this task.
- An employer requested an employee to come in early to work for an unusual service. (See *Los Angeles Jewish Community Council v. IAC (Cohn)* (1949) Cal. App. LEXIS 1491; *Schreifer v. IAC*, (1964) 61 Cal. 2d. 289; *See SCIF v. IAC (Casey)* (1928) 89 Cal. App. 197
- An employee is asked to work extra hours that are much later than usual and is requested to perform duties outside their normal work.

The special mission exception also applies when an employer requests an employee to attend a particular location or to do a task at a location outside of his/her regular work duties. If there is no fixed work location, all of the employee's travel is considered a special mission. (See *Fenton v. IAC* (1941) 44 Cal. App. 2d 379, 383-84, where a caseworker was killed in a motor vehicle accident when visiting a client; *Lefebvre v. WCAB*, (1968) 69 Cal. 2d. 386, where a volunteer firefighter was killed on his way to a fire drill.)

Thus, in the original hypothetical above, the injured worker would, in all likelihood, be eligible for workers' compensation benefits under the special mission doctrine even though her injuries occurred on her way to work. This is because the injuries arose out of and in the course of employment because her employer explicitly requested that she start work at an unusual hour for a special project.

Dual Purpose Rule. There are many other situations where an injured worker may be eligible for workers' compensation benefits even though it might not seem to be the case at first because the employee is not actively at work. The dual purpose rule is one such situation. This rule applies when an employee engages in personal business while concurrently out on a business errand. When employees are engaging in mixed personal and business purposes, they are generally considered to be acting within the course of employment for the entire time. The benefit to the employer need only be incidental and not a "major" or "substantial" factor for an injury to be found to be work related.

By way of example, suppose an employee travels to a conference for work. On the way back, they stop at a friend's house for a short visit before returning home. If the employee is injured in a car accident while driving from the conference to their friend's house, the injury may be covered by workers' compensation under the dual-purpose rule.

Commercial Traveler Exception. The commercial traveler exception to the going and coming rule applies when an employer requires an employee to travel out of town and stay overnight for business purposes. The employer must expressly or impliedly authorize the employee's travel. Under the commercial traveler exception, the employee's entire period of travel is considered "within the course of employment" even if the employee is engaging in personal activities.

Though not without limits, great latitude is generally allowed in the application of this rule; indeed, reasonably foreseeable social and recreational activities are covered. By way of example, incidents arising from trips to a museum, visiting relatives, or renting a moped while on off hours on a work trip have been found to arise from employment and compensable under the workers' compensation system.

Paid Travel Time to and from Work/Transportation Allowance. Generally, if an employer pays an employee for his/her time traveling to and from work or provides a travel allowance, it is inferred that the employment relationship starts at the time he/she leaves home and ends when he/she returns home. (*Kobe v. IAC (Ruble)* (1950) 35 Cal. 2d 33.) Therefore, any injury sustained while traveling to and from work would be work related.

However, there is an exception to this exception where the transportation allowance is nominal. The test depends on whether the travel allowance was substantial (not just nominal), the work location ▶

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is far from home, and the travel allowance was paid to induce the employee to accept employment.

Employer Provided Vehicle. If an employer provides an employee with a vehicle to take home and use for the commute or to job sites, any injury sustained to and from work would be found to be work related. For this exception to apply, the vehicle must be provided by the employer expressly, impliedly, by course of conduct or by custom.

Employer Requires Employee to Bring Own Vehicle for Work Use. In this exception, the employer expressly or impliedly requests the employee to bring his/her own vehicle to use at work. Any injury sustained while driving to or from work will generally be found to be work related. With this exception, it is not required that the employer pay or reimburse the employee for transportation to and from work. As long as the employer requires the use of the vehicle for work tasks, a workers' compensation claim may arise. For example, a farmworker who uses his/her vehicle for transportation to get between ranches may be compensated for the travel between ranches but not for the travel to work and from work. However, if he/she sustains an injury to work and from work, his/her injuries will generally be found to have arisen from and in the course of employment.

Home as a Second Work Location. When an employer authorizes work from home, the home becomes a "second jobsite" for purposes of the coming and going exception. If the employee is injured while going to and from their home to the employer's regular worksite, his/her injuries can be found to be work related. For this exception to apply, the employer has to expressly or impliedly authorize work from home as a condition of employment.

Injuries at Employer's Premises

Again, absent any exception, an injury sustained while coming and going to work is not work related. However, how are injuries treated that occur before or after an employee's shift, but while the employee is on the employer's premises? Generally, once an employee enters the employer's premises, the employment relationship begins and any injury sustained on the employer's premises will be deemed work related. Typically, the premises must be owned or controlled by the employer for this rule to apply.

For example, an injury that occurs in a parking lot maintained by the employer for the use of its employees or the driveway of employer's premises would typically be compensable. Other injuries that happen just outside the employer's premises may also be found to be work related. For example, if an employee is injured due to some condition on a pathway by which an employee must enter the employer's premises, a workers' compensation claim will likely be allowed. Claims may also be permissible where the employer has assumed control over an area outside of its premise (e.g., a sidewalk curb where the employer has painted "No Parking"). And claims may be permitted where an employee has to run outside to tend to some emergency or where the employee is injured waiting to be let into the work premises.

Special Risk/Zone of Danger

Workers' compensation eligibility may exist where an employee is injured outside the work premises due to an increased danger because of his/her employment. Like all of the foregoing examples, the special risk/zone of danger exception is fact specific and requires assessment of: (1) whether the employee was in the position to be injured because of being at, coming to or going from work and, "but for" the job, the employee would not have been in that area; and, (2) whether the employee is put in a position of risk that is greater than what the general public may face. (*General Insurance Co. of America v. WCAB (Chairez)* (1976) 16 Cal. 3d 595.) An employee who has an increased risk of assault near work may qualify for benefits under this doctrine. Further, employees who are forced to make difficult driving maneuvers to access the workplace may have a claim. In *Greydanus v. IAC (Basterretche)* (1965) 30 CCC 376, it was held that an employee had a claim when he was injured while making a challenging left turn from a highway into the employer's driveway. The court found that the employee was entitled to workers' compensation benefits because he was required to turn left off the highway and into the employer's property every day and was exposed to a particular risk not shared by the public generally.

Bunkhouse Rule

The personal residence of workers such as apartment managers, farm laborers, live-in housekeepers, motel managers or any worker who lives in employer provided, owned or controlled by the employer is considered to be a part of the "employment premises" for purposes of workers' compensation. Since the personal residence of such employees is considered to be the employment premises, injuries sustained during the reasonable and anticipated use of their residence generally qualify as workers' compensation claims. It does not matter if the employee pays ▶

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the employer to reside in the employer-provided housing, that the injury occurs outside of work hours or that the injury happened during a personal activity.

The employee need not permanently live in the employee provided housing either. An overnight stay at the employer provided housing would qualify the employee under the bunkhouse rule should he/she sustain an injury on the premise.

For the bunkhouse rule to apply, there must simply be a reasonable and anticipated use of the premises and some casual connection between the injury and the employment. Or the employee must sustain an injury because the employer-provided housing places the employee in a particular danger.

Personal Comfort Doctrine

Typically, under the personal comfort doctrine, any injury that occurs during work hours, even if the employee was engaged in an activity that is not necessarily a duty of the employment, would be considered eligible under workers' compensation. For instance, injuries sustained while an employee is using the bathroom, eating lunch on the premises, taking paid coffee breaks, chatting with a co-worker or taking a break to smoke have all been found to be compensable workers' compensation claims. The test is whether the employee's act was reasonably contemplated by the employment and not whether the employee's act provides a benefit to the employer. The injury can happen on or off the premise.

Volunteers

Generally, volunteers are not considered eligible for workers' compensation benefits. Labor Code Section 3352 excludes the following individuals from the definition of "employees" who would be entitled to workers' compensation benefits in the event of a work place injury: volunteers at religious, charitable or relief organizations, volunteer deputy clerks or deputy sheriffs, volunteers at recreational nonprofit camps or volunteer ski patrol members. However, it is important to note that some organizations choose to extend their workers' compensation coverage to volunteers even though it is not required. So workers' compensation coverage for volunteers needs to be explored on a case-by-case basis.

Additionally, certain volunteers do get coverage by statute. Volunteer firefighters (Labor Code Section 3361), recreation and park districts volunteers (Labor Code Section 3361.5), volunteer police officers (Labor Code Section 3362) and school district volunteers (Labor Code Section 3364.5) are all eligible for workers' compensation benefits if they are injured in the course and scope of their volunteer work.

Incarcerated Workers

Under Labor Code Section 3351(e), state prison inmates are considered employees for the purpose of workers' compensation "while engaged in assigned work or employment ... or engaged in work performed under contract." It is not essential that the inmate earn wages to be considered an "employee" and eligible for workers' compensation benefits. For example, an inmate who volunteers to work in the prison kitchen and is injured has been found to be an employee as contemplated by Labor Code Section 3351(e). (*Dudley v. State*, 2019 Cal. Wrk. Comp. P.D. LEXIS 520 (Cal. Workers' Comp. App. Bd. January 3, 2020).

While state prison inmates are covered by Labor Code Section 3351(e), it does not cover county and city inmates. Yet under Penal Code 4017, city and county prisoners are considered employees for purpose of workers' compensation if they sustain an injury or die while working in the prevention and suppression of forest, brush and grass fires within the county or city, or upon lands in adjacent counties where the suppression of fires would afford fire protection to lands within the county. City and county inmates who volunteer to work may also be considered employees. However, city and county inmates who are mandated to work as part of their sentence will not be considered an employee for purposes of workers' compensation.

Members of Boards

Under Labor Code Section 3351(c), all paid officers and members of boards of directors of quasi-public or private corporations while providing service for the corporation are considered "employees" for purposes of workers' compensation.

Residential Workers

Labor Code Section 3351(d) defines "any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children" as "employees." Although, under Labor Code Section 3352(a)(8), the employee must work or be contracted to work for 52 hours or more and earn $100 or more during the 90 days prior to the date of injury. Common examples of workers covered under Labor Code Section 3351(d) are nannies, babysitters, gardeners, housekeepers and handy persons.

Unlicensed Workers

Under Labor Code Section 2750.5, there is a rebuttable presumption that a person is an independent contractor if he/she is required to have a contractor's license. However, if the person is an unlicensed contractor and performing work for which a license is required, the "contractor" and their workers will be considered employees for purposes of workers' compensation. If the contractor does not have workers' compensation insurance, the workers' compensation insurance of the hirer may be triggered and/or a claim can be initiated with Uninsured Employers' Benefit Trust Fund.

Conclusion

As set forth above, there are many situations where it is not readily apparent that an injured individual has a workers' compensation case as either a stand-alone case or companion case to a third-party case. These situations can be very fact specific and turn on the smallest of details.

The failure to identify such workers' compensation claims can be harmful to the injured individual if they are deprived of access to medical care and not provided disability benefits. The same failure can be harmful to the personal injury practitioner in terms of exposure to a malpractice claim. So, if ever in doubt, it is always prudent to consult an attorney who is well versed in both the vanilla as well as esoteric aspects of the workers' compensation system. ◆



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— Alicia Villanueva is an associate at Viadro Law, LLP, in Oakland. She handles workers' compensation and personal injury matters."



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We are facing unprecedented challenges this year. And in every legislative hearing where a bill comes up that limits your clients' rights, inevitably one of the legislators' points to the mass and unprecedented advertising, particularly in Los Angeles, that is occurring. Here is brief recap of our challenges. Note that the Legislature ends this year on September 12, so all of this is fast moving, unpredictable and extremely concerning.

Rideshare Cases

The California Assembly Insurance and Conveyance Committees both passed legislation (Senate Bill 371) that reduces California's current uninsured/underinsured motorist coverages from the current $1 million (negotiated by CAOC in 2014) to $100,000/$300,000. This could be seen as a victory, as Uber wanted the limits to be reduced to $50,000 and to include other, massive tort reform. During the hearing, one legislator asked about the large billboard next to Los Angeles International Airport, which we have all seen. It states, "Uber-Lyft Lawyer 818-XXX-XXXX" right above the pickup area. The legislator made the point that he believes advertisers like this run up medical bills, increasing costs for everyone, and hence the need for lower mandatory insurance limits. This billboard was included in all Uber lobbying material. This issue will continue to be discussed, but one can expect Uber and Lyft to continue to strongly push this change.

Childhood Sexual Assault Cases

CAOC has been working with public entities and survivor groups to find a balance between protecting survivor rights and recognizing the complexities of impact on public entity budgets. Again, legislators see and complain about the advertising in this area. On April 28, a downtown Los Angeles law firm widely advertised on social media, "Our firm secured $4 BILLION DOLLARS settlement for victims of abuse in LA County juvenile halls. NOW WE ARE HELPING THOSE HELD IN CYA (CALIFORNIA YOUTH AUTHORITY) FACILITIES." While undoubtedly effective in generating leads, the advertisement drew swift and negative attention from policymakers in Sacramento, reaching as far as the governor's office. This single, sensational promotion quickly became a centerpiece for tort reform advocates, who circulated it among legislators as alleged evidence of unchecked and unethical attorney advertising. It directly fueled efforts to impose sweeping limitations on non-economic damages, including a proposal being aggressively advanced by the Los Angeles City Attorney. As a result, CAOC was compelled to divert significant advocacy resources to defend not only the legitimacy of such cases, but the credibility of our civil justice system more broadly.

Against this backdrop, CAOC remains committed to address the important goal of protecting the legal rights of sexual assault survivors, while also considering the legitimate concerns raised by public entities following the enactment of the "lookback" statute, which extended the statute of limitations for these cases. Assembly Bill 218 (Gonzalez, Chap. 861, Stats. 2019) amended C.C.P. §340.1 to create a three-year "lookback window," which revived all civil claims arising from childhood sexual assault that were barred as of January 1, 2020, "because of the applicable statute of limitations, claim presentation deadline, or any other time limit had expired." (C.C.P. §340.1, subd. (q).) As amended by AB 218, C.C.P. §340.1(a) provides that a victim of childhood sexual abuse may bring a claim: (1) any time before his or her 40th birthday or (2) within five years of the date that he or she discovered or reasonably should have discovered that the psychological injuries and/or illness suffered during adulthood were caused by the childhood sexual abuse, whichever period expires later (prior to the enactment of AB 218, the cut-off date was 26 years of age rather than 40, and the "delayed discovery" period was three years long, rather than five years). We are working very hard on a compromise in this area.

Public Entity Cases

Earlier this year, your advocates worked hard to prevent two bills from getting traction. One would have eliminated joint and several damages for economic damages against public entities. The other, mentioned above and being pushed by the Los Angeles City Attorney, would have capped attorneys' fees and also limited non-economic damages to $1 million. We have met with various public entities, and they give us statistical data that shows increases in filings; they complain about several Los Angeles advertising firms that, they claim, include the state in claims where the state has no role. We understand the Government Tort Claims restrictions, immunities and filing deadlines on public entity cases and the need to often include them; however, we ask that our members take a breath and include the state only where justified after due diligence. We envision tort reform legislation in this area and, unlike past years, we are going to have more political challenges due to increased scrutiny in this area.

Fires

First, our hearts go out to Los Angeles and those of you who have clients, or who you yourself, have lost homes. Over 60 fire-related bills have been introduced in the legislature, and there is increased concern over the fire's impact not only on victims and communities, but on the sustainability of the Wildfire Fund.

Part of that discussion, again, has been the large amount of advertising for fire victims. One large Los Angeles billboard, next to burnt out cars, says "$50 billion fire lawsuit 818-XXX-XXXX." This is terrible on so many fronts. This comment is not aimed at 99.9 percent of CAALA and CAOC members, but please, for the others, just stop and think about what your advertisement looks like to the public and legislators. Please think about your duty as an attorney to protect not just your clients but the rights of future victims and of our profession. Your advocates have spoken to very high elected officials on fire issues; there is a constant complaint about this type of advertising and what they see as the inclusion of "exotic claims" in the fire litigation.

As a reminder, Senate Bill 37 (Umberg), sponsored by CAOC, strengthens oversight of attorney advertising by toughening advertising rules and closing enforcement gaps. Specifically, SB 37:

- Attacks the illegal practice of "capping," which occurs when a non-lawyer steers a case to a particular lawyer for financial gain. SB 37 would allow consumers to directly enforce the law by holding lawbreakers accountable.
- Cracks down on third-party, often out-of-state, "lead generators" who make unrealistic promises and aren't being held accountable.
- Updates the definition of attorney advertising in statute to better encompass a broader range of communication methods in line with the State Bar Professional Conduct Rules.
- Tightens statutory prohibitions on misleading attorney advertising.

And finally, thank you. We cannot advocate for your clients in Sacramento without your help. We appreciate everything you do to assist us in this fight. ◆

Alameda-Contra Costa TRIAL LAWYERS' ASSOCIATION

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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.

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For further information, please contact:

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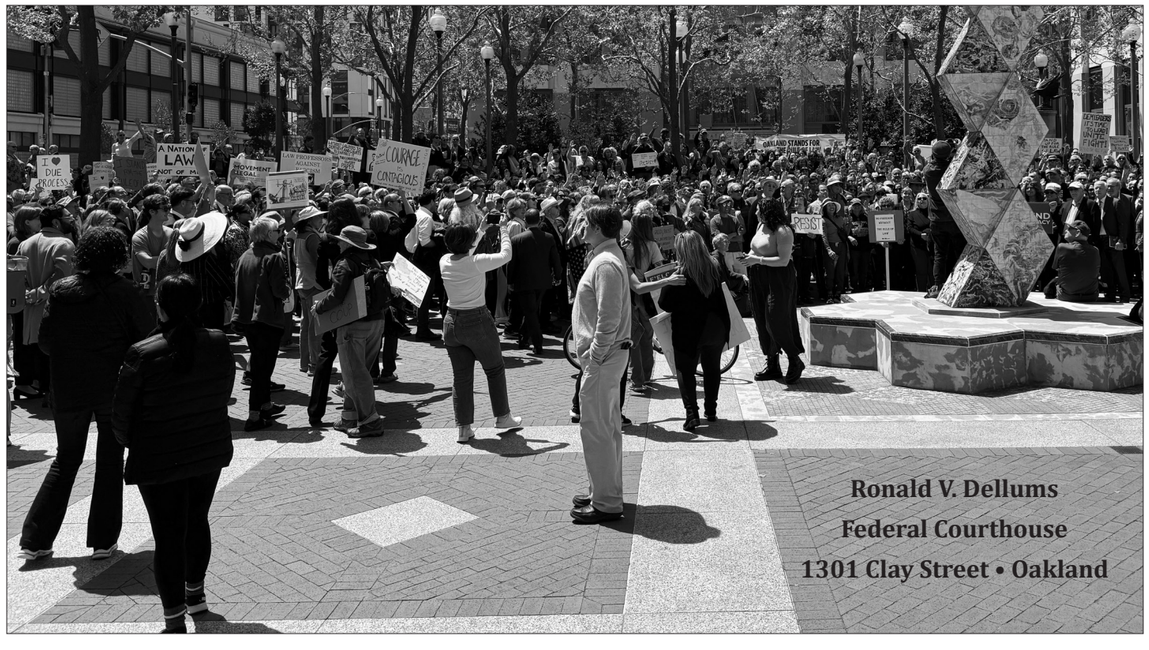

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Oakland Law Firm Recovers Huge Settlement on Behalf of Modesto Attorney and His Family Wrongfully Accused of Murder by Stanislaus County

The combined $22.5 million settlement of the eight civil rights cases is reportedly one of the largest civil rights cases ever resolved in the State of California



On Tuesday, April 15, 2025, the Stanislaus County Board of Supervisors approved a $22.5 million settlement for the deceased criminal defense attorney, Frank Carson, and seven other people wrongfully and maliciously accused of murder, including Frank Carson's wife and stepdaughter. Carson became the target of a retaliatory investigation cooked up against him by the Stanislaus County District Attorney's office in retaliation for his high-profile successes in the courtroom and his accusations of corruption against District Attorney Birgit Fladager and her investigative staff. $12 million was negotiated by Jayme Walker and J. Gary Gwilliam of the Oakland law firm Gwilliam, Ivary, Chiosso, Cavalli and Brewer on behalf of Frank Carson, his wife, Georgia DeFilippo, his stepdaughter Christina DeFilippo, and CHP Officer Eduardo Quintanar. After years of civil litigation, Stanislaus County is finally paying for the horrendous abuse of government power and the malicious prosecutions of eight innocent people. $10.5 million will be paid to former CHP Officers Walter Wells and Scott McFarlane, and local business owners, Baljit Athwal and Daljit Atwal.

These cases arise from false arrests and malicious prosecution cases against a long-time criminal defense attorney, Frank Carson, and seven other people Frank Carson was well-known and reviled by the Stanislaus County District Attorney's Office — and some other local law enforcement in Modesto, California because of his aggressive and successful style of criminal defense and his public accusations of dishonesty, corruption, and abuse of power. Carson scored several high-profile wins against the DA's Office and even ran against Birgit Fladager in the 2014 DA election.

The case began in March of 2012 when Korey Kauffman, a young petty thief and methamphetamine addict, disappeared. Law enforcement at the Stanislaus District Attorney's Office became involved when a felon informant told police that Kauffman may have gone onto Mr. Carson's property to steal things from him. As soon as Carson's name came up, the District Attorney's Office started an investigation of Carson for murder even though Kauffman was just a missing person at that time.

In August of 2013, Kauffman's body was found in a remote area of the Stanislaus National Forest.

Another methamphetamine addict named Robert B. Woody was allegedly implicated in the murder of Kauffman when he made some meandering comments about the murder to his girlfriend indicating that he alone had cut up Kauffman's body and fed him to pigs.

Mr. Woody was arrested on March 1, 2014, and interrogated for seven hours and threatened with the death penalty. For hours he denied any involvement. But then he was taken on an 18-minute bathroom break, and he finally relented and repeated the information he was fed by investigators, who had a long acrimonious history with Carson. This led to a so-called "confession" that was clearly coerced wherein he accused his former employers at the Pop-N-Cork convenience store of patrolling Carson's property for thieves and killing Kauffman.

There was no forensic or scientific evidence to indicate that Kauffman was ever even on the Carson property, let alone killed there. The District Attorney's Office and their investigators, including the Sheriff's Department, who all disliked Carson because of his success, decided to go after a group of innocent people, including Carson, his wife Georgia DeFilippo, his stepdaughter Christina DeFilippo, three Highway Patrol officers and two local businessmen — most of whom didn't even know each other — and accused them all of conspiracy regarding Kauffman's death. They were all arrested in August of 2015.

After one of the longest preliminary hearings in California history — 18 months — all criminal charges against Georgia and Christina DeFilippo were dismissed for lack of probable cause to believe they had committed any crime. Indeed, the DA's Office simply went after them in hopes that Carson would plea to spare his family.

The case went to trial against Frank Carson, and the owners of a liquor store (Pop-N- Cork), Daljit Atwal and Baljit Athwal. After a 17-month jury trial, all the defendants were acquitted by a jury after a mere two days of deliberation. Ultimately all the charges against all the plaintiffs in this case were either dismissed by a judge, a jury, or otherwise dismissed. Thereafter, all eight wrongfully arrested people filed this false arrest and malicious prosecution lawsuit.

Unfortunately, Frank Carson, who had become ill while in jail awaiting the trial on a "no bail" charge, died on August 12, 2020.

After over seven years of investigation and prosecution, not one of the plaintiffs was ever convicted of anything. They were all innocent. Robert Woody, who pled guilty, also completely recanted his story and says he made it all up due to coercion. No one has ever been found to have killed Korey Kauffman, although there were many serious suspects that have been ignored.

J. Gary Gwilliam, co-lead counsel for four of the Plaintiffs stated: *"This case is a cautionary tale for what happens when Government, and especially law enforcement, exercises their unfettered power to accuse and prosecute innocent people for revenge, retaliation, and retribution. Fortunately, through the immense efforts of very capable lawyers, the victims of these wrongful arrests and prosecutions have obtained some measure of justice by means of these very large settlements."*

Jayme L. Walker, co-lead counsel for four of the Plaintiffs, followed: *"The Stanislaus County DA's Office tried to rid itself of a successful adversary by prosecuting Frank Carson and his family for a crime they did not commit. Carson fought the system as a criminal defense attorney but at the same time he represented its most basic and fundamental rights. He and seven other innocent people paid dearly to protect these rights. Their fortitude in seeing this case through, for standing up against all odds, is an inspiration and it was an honor to fight alongside them."*

During the years of subsequent civil litigation, the plaintiffs' attorneys took over 33 depositions and won several important hearings. Robert Woody, who served six years of prison time for his coerced confession, entirely recanted and testified under oath in the civil rights cases that he made it all up and was never involved in any way in Kauffman's murder.

The cases settled in the Eastern District of California just one day before they were originally set for trial.

The total settlement amounts are as follows:

Represented by J. Gary Gwilliam and Jayme L. Walker, Oakland ($12M recovery):

- Frank Carson Estate – $4,000,000
- Georgia DeFilippo – $4,000,000
- Christina DeFilippo – $2,500,000
- Eduardo Quintanar, Jr. – $1,500,000

Represented by Morrison Foerster, San Francisco ($10.5M recovery):

- Walter Wells – $3,500,000
- Scott McFarlane – $1,850,000
- Baljit Athwal – $1,850,000
- Daljit Atwal – $1,850,000

Morrison Foerster also received attorney fees. ◆

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