

Summer 2019 • Volume 25, Issue 3

# the PRACTITIONER



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# Letter From the Chair

By Renee N. G. Stackhouse



**Renee Stackhouse** is a San Diego trial attorney and founder of Stackhouse, APC who focuses on plaintiff's personal injury, military, and criminal defense. She is Chair of the CLA Solo & Small Firm Section,

Immediate Past President of California Women Lawyers, President of the CWL Foundation, and sits on the San Diego County Bar Association. She is faculty at the prestigious Gerry Spence Trial Lawyers College and the founder of MSheLE.com. She can be reached at [Renee@StackhouseAPC.com](mailto:Renee@StackhouseAPC.com).

**I**t is part our mission to guide our members on their path to becoming strong, competent and ethical solo and small firm business owners so this issue of the Practitioner is devoted to the Business of Law.

According to the Small Business Administration, there are over 28 million small businesses in the United States. Of those, only 50% will survive. Worse, only about one third last more than 10 years. "Wait," you're saying..." does that include law firms?" Yes, my friends. Law firms = businesses.

Some of the top reasons for businesses failing include lack of planning (short and long-term), poor leadership, lack of differentiation, ignoring customer needs, poor financial management, premature scaling, and having the wrong partner.

So, how do you overcome the obstacle to running a successful law practice? My top five pointers are: make a business plan and budget, develop your mission, vision, and value statements, outsource the non-lawyers things that you can (i.e. find a bookkeeper to handle the finances), write down your goals, and be selective about with whom you work, whether it's partner, employee or client. These basics have helped me lay the foundation for my

successful practice, keep me focused on my goals, and serve as the lens through which I make any business decisions.

But you don't have to just take my word about what works. Throughout this issue, you'll see articles from thought-leaders across the state on how to reach your maximum potential and how to care, not just for your business, but for yourself.

In addition to these articles, Solo & Small Firm (SSF) has increased its online library in a collaborative project with the Business Law Section featuring three new webinars on "Will That Smiley Face Cost You a Case? The Business of Law, Emojis, and Text Communication" and "Website Compliance and Accessibility (ADA): How to Improve Your Law Firm's Website" and "Unplug and Debug the Stress of Client Communications." I hope you take the opportunity to view them and pick up some tips to improve your business and modern-day communications. We have an ever-growing library of useful webinars dedicated to the needs of solo and small firm practitioners.

## the PRACTITIONER FOR SOLO & SMALL FIRMS

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the PRACTITIONER for Solo & Small Firms is designed to provide accurate information to professional advocates. However, we make this subject matter available to our members with the understanding that the publisher is not engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

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Make sure to also keep an eye out for our upcoming Symposium on Solo Success (Southern California) happening on September 20 in San Diego at Thomas Jefferson School of Law. It will focus on the four cornerstones for solos and small firms of opening, managing, growing, and technology for our businesses. For those not in San Diego, don't worry-it will be live-streamed so you won't miss a thing.

We want to make sure we're offering resources that will help support you and we value your input. Please don't hesitate to reach out if there are topics, resources, or ideas that you have that you feel would benefit solos and small firms across the state. We also welcome you to reach out if you would like to speak or write for the SSF Section. We love featuring our talented members!

Speaking of talented members, I want to close by taking a personal point of privilege and acknowledge how impressed I am by the remarkable women we honored at the Solo & Small Firm Reception at the Solo Summit in June. These women truly exemplify excellence in the profession and elevate the reputation of solo and small firm practitioners through their work and service. I hope you enjoy reading their short interviews in this issue. Congratulations once more to Norma Williams, Sheila-Marie Finkelstein, and Summer Selleck, our inaugural Excellence Awards recipients.

#SSFShines

Renee N. G. Stackhouse



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# Letter From the Editor

By Somita Basu

As fall approaches and recent summer vacations seem like they were years ago, Solo and Small Firm practitioners across California buckle down for a big push of productivity before the year end festive season creeps up does its merry part in destroying office efficiency. It seems with every year that clients demand more with shorter turnaround times and more accuracy. What's a Solo and Small Firm practitioner to do?

In this issue, our authors provide some insights in how to address the myriad challenges of practice management. Do you have employees? Shivani Sutaria addresses the issues that all employers should be aware of surrounding employee complaints and how to determine if an investigation is warranted.

Solo and small firm practitioners can often feel overwhelmed the workload of running a practice. Chris Toews discusses how to get efficient by outsourcing or delegating things that attorneys should not do. To help wring more productivity out of your day, we have an article from the CEB archives on five ways lawyers can maximize their time.

While outsourcing is a wonderful tool in increasing the efficiency of a solo and small firm practice, there are a number of issues of which attorneys should be aware when engaging independent contractors to handle aspects of their business. As this is a rapidly evolving area of employment law, Cynthia Elkins provides a timely update on the status of independent contractors in California.

Despite the challenges that solos face, many excel and thrive and give back to their community in many ways. Renee Stackhouse provides some insight in her



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interviews with the three recipients of the Solo and Small Firm Excellence Awards. We hope you will be as inspired by the awardees as we are.

The legal profession is undoubtedly a stressful one. Solo and small firm practitioners know this fact better than most. Getting paid in a timely manner is often an on-going challenge. An article from CEB on getting paid and including appropriate language in your billing statements provides pointers on how to protect your financial position.

Finally, a diversity of viewpoints and experiences can help to provide attorneys insights on how best to fine tune their practice management skills. Kris Mukerji interviews three different solo and small firm practitioners about the tools they use, the challenges they have faced, and why they love what they do.

We hope you enjoy this issue and will be able to use some of the suggestions on practice management to make your practice more efficient, productive, and ultimately more satisfying.

# MCLE Article: The Four “W”s of Workplace Investigations: When, Who, What to Expect and What is Adequate

By Shivani Sutaria



**Shivani Sutaria** has been practicing employment law for 12 years. She is the founder of Shivani Sutaria Law Offices in San Mateo, CA; her law firm focuses on conducting external workplace investigations and counseling employers. She is a graduate of the AWI's Training Institute for Workplace Investigators, and an AWI Certificate Holder (AWI-CH).

In the recent years, there have been several highly-publicized lawsuits brought by employees of law firms, alleging discrimination and harassment. While the news stories have focused on lawsuits against the large law firms, smaller law firms have faced similar legal claims. It is important for the smaller law firms to be prepared to address employee complaints, and determine whether an investigation is warranted, and if so, how to select an investigator, what to expect when an investigation is conducted, and what constitutes an adequate investigation.

## WHEN TO CONDUCT AN INVESTIGATION

Complaints of alleged workplace misconduct come to the attention of employers in a variety of ways. Typically, it is through an employee's direct reporting to a supervisor or a human resources representative (if there is a one). Employers can also learn about potential misconduct through observation of interactions between employees, notice by third-parties or even anonymous reviews.

Once on notice regarding potential discrimination or harassment, California employers have a legal duty to investigate. California's Fair Employment & Housing Act ("FEHA") requires employers to "take all

reasonable steps to prevent discrimination and harassment from occurring" in the workplace.<sup>1</sup> Failure to do so can be the basis for independent liability in a lawsuit.<sup>2</sup> The courts have deemed that one such "reasonable" and "necessary" step employers must take to prevent discrimination and harassment is prompt investigation of complaints.<sup>3</sup> The 2017 "California Department of Fair Employment and Housing Workplace Harassment Prevention Guide for California Employers" ("DFEH Guide"),<sup>4</sup> which is based on the California Fair Employment and Housing Council 2016 regulations on "Harassment and Discrimination Prevention and Correction,"<sup>5</sup> specifically also states that "prompt, thorough and fair investigations of complaints" is a required step in preventing and correcting discrimination and harassment.<sup>6</sup>

Absent a legal duty, formal workplace investigations are advisable if the law or company policy are implicated, key facts are in dispute, and/or the extent of harm and number of people needs to be determined.<sup>7</sup> This can include, but is not limited to, workplace situations related to violence, theft, bullying, confidentiality breaches, and consumption of alcohol or other illicit substances at work.

## WHO TO SELECT AS THE INVESTIGATOR

Once the small firm determines a workplace investigation is legally required or simply a good idea, firm management must then confront the question of, “Who should conduct the investigation?” The answer to the question of who should investigate is found in relevant statutes, case law and EEO agency guidelines.

### Legally Authorized Workplace Investigators

California law, specifically California’s Private Investigator Act (“PIA”)<sup>8</sup>, dictates who can perform investigations related to issues that arise in the workplace: “identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.”<sup>9</sup> This statute allows for licensed private investigators to conduct investigations. It also provides exceptions, thus allowing two other categories of professionals to perform workplace investigations.

First, workplace investigations can be conducted internally by “a person employed exclusively and regularly by any employer ... in connection with the affairs of such employer only and where there exists an employer-employee relationship.”<sup>10</sup> Thus, investigations *may* be conducted by internal human resources representatives, executives, company counsel, in-house investigators and, in the case of small law firms, the firm’s managing partners or office manager. This means that third-party consultants, such as human resources consultants, without a private investigator or attorney license are not authorized under California law to conduct investigations. Any person who unlawfully investigates and the person who “knowingly engages” an unlicensed person faces a fine of \$5,000 and imprisonment of up to one year in jail.<sup>11</sup>

<sup>11</sup> This relationship was attacked a few years ago in the case of *City of Petaluma v. Superior Court*.<sup>12</sup> In *City of Petaluma*, the court extended the attorney-client privilege to workplace investigations performed by an external attorney investigator, holding that the attorney investigator was performing legal services when conducting a workplace investigation for an employer. In this case, it was argued that since the attorney investigator was a “fact finder” who did not render legal advice as to what action to take as a result of the

findings of the investigation, the attorney investigator was not performing legal services to which the privileges would apply. The court disagreed, ruling that an attorney-client relationship can exist absent the rendering of legal advice.<sup>13</sup> The court further stated that the work of the attorney investigator to “use [her] legal expertise to identify the pertinent facts, synthesize the evidence, and come to a conclusion as to what actually happened”<sup>14</sup> is the performance of a legal service and thus the application of the attorney-client privilege and the work product doctrine applied to her entire investigative efforts.

### Criteria in Selecting the Investigator

In deciding whether the investigation should be conducted internally or externally as well as who that investigator should be, there are three questions to ask: 1) whether the investigator can be neutral and impartial, 2) whether the investigator can conduct the investigation promptly and thoroughly and 3) whether the investigator possesses the relevant skills.

#### *Is the Investigator Neutral and Impartial?*

Investigator neutrality and impartiality is of paramount importance.<sup>15</sup> Ideally, the investigator is someone who has no personal or other connection to the parties or employer and can objectively consider all the evidence being gathered. As such, workplace investigations should *not* be conducted by someone who is a potential witness, possesses actual or perceived bias for or against the complainant or subject, or is in the position to be influenced by those involved or by the outcome.

Internal investigators who may not be neutral and impartial would include a human resources manager investigating an accommodation complaint revolving around his own decision not to accommodate a disabled associate attorney, or a supervising attorney investigating a harassment claim against a paralegal with whom the supervising attorney has a personal friendship, or the managing partner investigating the firm’s founding partner to whom she reports regarding a pay equity concern. Recently, in *Viana v. FedEx Corporate Services*<sup>16</sup>, an unpublished Ninth Circuit case, the court overturned summary judgment for the employer partially due to the employee presenting evidence that the investigator - her supervisor - was biased against her due to her age, gender, and national origin; Viana’s supervisor, who investigated the alleged misconduct



and made the decision to terminate her, had called her a “bitch” and other sexist terms.<sup>17</sup>

When utilizing an external investigator, the small law firm must also ensure there is neutrality and impartiality. There is an obvious conflict of interest when an employer’s defense counsel – who is retained to be a zealous advocate for the employer – is also tasked with investigating a complaint for the client. It is highly unlikely that defense counsel can simultaneously satisfy the role of advocate and impartial investigator. Furthermore, if the issue being investigated leads to litigation, then the adequacy of the investigation will be challenged on this basis. Thus, defense counsel may be placed in the position of having to testify as a witness in a matter in which she is defending.

Ultimately, having a neutral and impartial investigator promotes a more effective investigation process; witnesses will be more likely to be forthcoming with information, perceive the process as fair, and accept the findings and/or recommendations.

### ***Can the Investigator Conduct the Investigation Promptly and Thoroughly?***

While there is no legally prescribed timeline for starting, conducting and concluding an investigation, the goal is for the process to be begin “promptly, as soon as is feasible” and “once begun, it should proceed and conclude quickly.”<sup>18</sup> However, the amount of time an investigation takes from beginning to end will always differ based on a variety of factors, such as the seriousness of the allegation, scope of the issues, and the availability of the witnesses and other evidence.

While promptness is important, thoroughness is of equal if not more significance. The entire investigation process has many steps, from agreeing on the scope with the client, developing an investigation plan, interviewing witnesses with varying availability, obtaining relevant documents that can exist in various hard and electronic forms, and drafting the investigation report. Also, investigations are an evolving process, in that information received can lead to the need to interview a newly identified witness or view recently discovered video surveillance.

### ***Does the Investigator Possess the Requisite Skill?***

Effective investigators should have knowledge regarding standard investigatory practices as well as possess the applicable skills needed to conduct investigations.<sup>19</sup> For example, strong oral and written communications skills are critical as investigators need to interview witnesses and draft investigation reports. Interpersonal skills are also critical; establishing rapport with witnesses can result in productive interviews where more information is obtained. Furthermore, a must-have skill is the ability to synthesize and analyze facts for the purpose of making factual findings, which is the investigator’s primary charge.

There are several professional organizations such as the Association of Workplace Investigators (“AWI”) and the Society for Human Resource Management (“SHRM”) as well as law firms and that provide training programs for workplace investigators. For example, AWI offers an accredited certificate program that consists of four days of training and one day of testing. Those who achieve passing scores on the tests receive a certificate and the ability to use the certificate designation of Association of Workplace Investigators Certificate Holder (“AWI-CH”).

In sum, smaller employers, in particular, struggle to identify internal employees who are simultaneously neutral and impartial, prompt and thorough, and skilled in investigations. This can be for a variety of reasons, ranging from not having an uninvolved human resources representative, to not having a managing partner with the time to dedicate to the investigation, to not having a senior partner who is qualified to conduct a workplace investigation. As a result, smaller firms have a greater need to rely on external investigators to conduct their workplace investigations.

### **WHAT TO EXPECT IN AN INVESTIGATION**

At the outset of an investigation, the employer communicates to the investigator the scope, or in other words, the issues to be investigated. The employer should not, however, be part of the next step which is investigation planning; this entails the investigator deciding who should be interviewed, the chronology of the interviews, and what documentary evidence should be reviewed.

In conducting the investigation, the investigator's task is to gather relevant factual information. The primary way investigators do this is through interviewing the complainant, subject and witnesses. Investigators should document their interviews, either through taking handwritten or typed notes, drafting statements for witnesses to sign, obtaining witness statements, and/or audio recordings. Investigators also gather factual information through reviewing relevant documents. Based on the situation, investigators may need to view surveillance, inspect physical space and/or involve experts such as forensic accountants.

Most investigations, especially those involving "he said/she said" situations, require the investigator to assess the credibility of those interviewed. Factors related to credibility include corroboration through witness testimony or physical evidence, inherent plausibility, motive to falsify, bias, past record, ability to recollect, habit, and inconsistent/consistent statements.<sup>20</sup>

Investigators must then synthesize and analyze the gathered facts and assesses the interviewees' credibility for the purpose of making factual findings. In making findings, investigators' standard of proof is "preponderance of the evidence" or "more likely than not", which has been described as "fifty percent plus a feather."<sup>21</sup> It is recommended that investigators do not make legal conclusions, as their responsibility is to make factual determinations. It is also recommended that investigators do not make conclusions about whether company policy was violated nor provide advice regarding corrective action or other employer action.<sup>22</sup> One of the reasons for this is because the employer - not the investigator - possesses knowledge about its company policies and how they have consistently been applied in the past.

Investigators can present their factual findings to clients in either verbal or written reports, which can vary in detail and length based on the complexities and employers' preference. If an employer is going to rely on the investigation to take corrective action, the Fair Credit Reporting Act ("FCRA") requires the employer to provide a summary of the investigation findings to the employee against whom the action will be taken.<sup>23</sup>

### What is an Adequate Investigation

*Cotran v. Rollins Hudig Hall International, Inc.* is a landmark decision in which the California Supreme

Court established the tenets of a reasonable, good faith investigation.<sup>24</sup> In this sexual harassment case, the employer took an adverse employment action based on the findings of an investigation, which entailed interviewing the complainants, the accused and twenty-one other witnesses, obtaining sworn statements from the complainants, and assessing the parties' credibility. However, the findings ultimately proved to be inaccurate. The court ruled that the proper question for a jury in assessing an employer's adverse action following an investigation is whether it was the result of "fair and honest reasons regulated by good faith on the part of the employer which are not trivial, arbitrary, capricious, unrelated to business needs or goals, or pretextual."<sup>25</sup> The court further defined the term "good cause" as a "reasoned conclusion ... supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond."<sup>26</sup>

Subsequent cases have further addressed what an "adequate investigation" entails. In *Silva v. Lucky Stores, Inc.*,<sup>27</sup> the appellate court noted numerous aspects of the investigation that made it a "good faith" and "reasonable" investigation. The court stated that Lucky had a written investigation policy in place and utilized an uninvolved human resources representative who had been trained by in-house counsel on how to conduct an investigation. The investigator promptly interviewed the complainant, subject and numerous witnesses, recorded the information obtained from the interviews and/or obtained a written statement, asked "relevant, open-ended, nonleading questions", maintained confidentiality by conducting a number of interviews off the company premises or by telephone, and assessed credibility.<sup>28</sup>

There are also several post-*Cotran* cases where the court deemed the investigation to be inadequate. In *Nazir v. United Airlines, Inc.*,<sup>29</sup> the court found many shortcomings in the investigation including the failure to interview potential witnesses and follow its own written investigation procedures.<sup>30</sup> Moreover, the court also noted that when the investigation is conducted by someone who "inferentially had an axe to grind, assisted by someone who 'served' him", it is evidence of pretext.<sup>31</sup> In *Mendoza v. Western Medical Center Santa Ana*,<sup>32</sup> the court determined the investigation was perfunctory; in this sexual harassment case, the court

stated that the investigator was not properly trained, had no investigation plan, interviewed the complainant and subject together, interviewed no witnesses and failed to assess credibility. The court found that this flawed investigation was evidence to support the employee's wrongful discharge claim. *Nazir* and *Mendoza* demonstrate that conducting an investigation is not enough to satisfy an employer's legal burden, but that the investigation must contain the adequacy hallmarks articulated in *Cotran* and its progeny.

## CONCLUSION

It is important for small law firms to maintain the appropriate policies, including a workplace investigation policy, and take measured steps to assess a workplace concern and determine whether an investigation, either internal or external, is warranted. The courts have made it clear that the investigation will be scrutinized if there is litigation, and that a failure to follow guidance on what constitutes an adequate investigation can result in employer liability.

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## ENDNOTES

- 1 CAL. GOV'T CODE §§ 12940(j)(1) & (k).
- 2 CAL. GOV'T CODE § 12940 (k).
- 3 Northrop Grumman Corp. v. WCAB, 103 Cal. App. 4th 1021, 1031 (2002).
- 4 Housing Workplace Harassment Prevention Guide for California Employers ("DFEH Guide"). The DFEH Guide can be found at <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide-1.pdf>.
- 5 CAL. CODE REGS. tit. 2, §§ 11023-11024.
- 6 DFEH Guide, *supra* note 4, at 1.
- 7 Association of Workplace Investigators ("AWI") *Guiding Principles for Conducting Workplace Investigations*, AOWI (2012) [https://cdn.ymaws.com/www.awi.org/resource/resmgr/files/Publications/Guiding\\_Principles\\_.pdf](https://cdn.ymaws.com/www.awi.org/resource/resmgr/files/Publications/Guiding_Principles_.pdf) ("Guiding Principles"), "workplace investigation should occur when indicated by law or policy as determined by the employer.").
- 8 CAL. BUS. & PROF. CODE §§ 7523 *et seq.*
- 9 CAL. BUS. & PROF. CODE § 7521.
- 10 CAL. BUS. & PROF. CODE § 7523(a).
- 11 CAL. BUS. & PROF. CODE § 7523(b).
- 12 City of Petaluma v. Super. Ct, 248 Cal. App. 4th 1023 (2016).
- 13 *Id.* at 1033-2034.
- 14 *Id.* at 1035.
- 15 DFEH Guide, *supra* note 4, at 4.
- 16 Viana v. FedEx Corporate Services, No. 16-56346 (9th Cir. March 22, 2018).
- 17 *Id.* at 3.
- 18 DFEH Guide, *supra* note 4, at 3.
- 19 DFEH Guide, *supra* note 4, at 4-5.
- 20 DFEH Guide, *supra* note 4, at 5-6; EEOC's "Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors" ("EEOC Guidance"). The EEOC Guidance can be found at <https://www.eeoc.gov/policy/docs/harassment.html>.
- 21 DFEH Guide, *supra* note 4, at 6; AWI Guiding Principles states "In many workplace investigations, the appropriate standard of evidence will be 'the preponderance of the evidence' standard; namely, whether after weighing all the evidence, it is more likely than not that the alleged incident occurred."
- 22 DFEH Guide, *supra* note 4, at 7.
- 23 15 U.S.C. § 1681b(y)(1)(B)(1); 15 U.S.C. § 1681b(y)(2).
- 24 Cotran v. Rollins Hudig Hall International, Inc., 17 Cal. 4th 93 (1998).
- 25 *Id.* at 108.
- 26 *Id.* at 108.
- 27 Silva v. Lucky Stores, Inc. 65 Cal. App. 4th 256 (1998).
- 28 *Id.* at 265-277.
- 29 Nazir v. United Airlines, Inc., 178 Cal. App. 4th 243 (2009).
- 30 *Id.* at 280.
- 31 *Id.* at 277.
- 32 Mendoza v. Western Medical Center Santa Ana. 222 Cal. App. 4th 1334, 1337, 1345 (2014).

# Getting Efficient: Minimizing, Delegating and Outsourcing Things You Should not Do

By J. Christopher Toews



**J. Christopher Toews** is senior partner with Toews Law Group, Inc. in San Luis Obispo and specializes in estate, business and tax matters. He was formerly a Vice President of Citibank, N.A. and has written several articles on practice management issues. He is also a member of the Executive Committee of the Solo and Small Firm section of the California Lawyers Association.

One of the basic realities of running a law practice is that most of the tasks needed to deliver legal services do not involve the practice of law. These tasks range from simple things like keeping the floor clean and stocking the kitchen to more complicated stuff like bookkeeping, filing payroll tax returns and updating computer software.

Another reality is that even tasks that are integral to providing legal services – e.g., information gathering, setting up files and drafting form letters – do not require the services of a person with a lawyer’s level of training to perform. Well-trained staff can do them just as well, and can be billed out, profitably, at a fraction of the lawyer’s hourly rate.

The fact that these tasks do not require a lawyer’s level of training does not mean that they are unimportant. To the contrary, they are very important and need to be done competently and correctly if the office is to deliver services to its clients in a timely and cost-effective way.

That said, it is also true that the lawyer who wants to get paid well for his or her time cannot afford to get involved in personally doing these tasks. Clients will gladly pay a decent hourly rate for time spent on giving them advice and on other tasks that require the skill and training of a lawyer; but they are not going to pay hundreds of dollars per hour for clerical work, bookkeeping or managing payroll records because those tasks, while important, do not justify a lawyer’s rate.

The lawyer who wants to be paid like one needs to identify all of the non-legal tasks that are needed to run the office and either (a) delegate them to non-lawyer staff who are trained and qualified to do them (b) outsource them to other professionals who specialize in doing those tasks or (c) in appropriate cases, eliminate them altogether.

The end result of doing all of this will be to increase the monetary return on the lawyer’s time by limiting the use of that time to tasks that require the training and experience of a lawyer.

## 1. ELIMINATING BUSY-WORK; THE LOW-HANGING FRUIT

There are some activities that take up a lot of time in traditional law offices that technology allows us to eliminate altogether, at least if we are willing to use the technology. One example is transcription, either in-person or using tapes or other media, because speech recognition software (viz., Dragon) is now good enough to completely do away with this activity.

Even a few years ago, speech recognition software was so inaccurate that time spent correcting the text output was nearly equal to the time that it would have taken to input the text from a keyboard. One big problem was that desktop computers did not have enough memory to run accurate speech recognition software efficiently.<sup>1</sup> Now, however, hardware with more than enough capacity to run speech recognition software is cheap,

and entry-level versions of the software itself can be had for less than \$100 per copy. All that is required is for the lawyer to install the software and train himself (or herself) to use it. Time spent climbing this learning curve will pay big dividends in saved staff and lawyer time down the road.

Another whole set of tasks that should be slated for elimination relates to tasks related to the maintenance of paper files – carrying files back and forth from the file room (or remote storage), typing file labels, affixing tabs, archiving and destroying old files, etc. The reason is very simply that all files can now be maintained in electronic form at a fraction of the cost of paper, because storage space on electronic media is cheap and the amount of space available is for all practical purposes unlimited.<sup>2</sup>

What is more, electronic files are more useful than paper ones because they can be accessed from anywhere with an internet connection, be used by multiple users at the same time, shared with clients and others at the push of a button, are more secure than paper (if properly backed up), take up no expensive floor space at the office and require no staff time to move them between offices or to remote storage.

While a discussion of electronic filing systems is beyond the scope of this article, there are many resources available for setting up simple but workable electronic filing systems.<sup>3</sup> The time and money saved from implementing electronic storage will cut down on staff time and other overheads and will free up the lawyer to spend more time doing what he or she has been trained to do – practice law.

## 2. OUTSOURCING

Well-run businesses of all kinds and sizes must make choices about the things they are going to do themselves and the things they are going to have others do. Fundamentally, the test for outsourcing is simple: Is this something that we can do better or more efficiently than anyone else? If the answer is yes we keep it, but otherwise we will find the best provider of the service and have that provider do it for us.

A senior contributor to Forbes Magazine recently broke it down this way:<sup>4</sup>

“In a world of outsourcing, no organization should have second-class support groups. They should outsource those functions to someone else who makes their living doing this. The fundamental idea is to figure out where you’re going to invest to be best in class (superior), world class (parity with the best), strong (above average) and good enough. Then:

- Best in class: invest to increase your lead
- World class: invest to keep up with your peers
- Strong: invest a little or consider outsourcing
- Good enough: outsource to someone who cares.”

Many of the activities involved in running a law firm, e.g., IT services, payroll processing, bookkeeping and building maintenance, clearly fall into the “good enough” category – because the lawyer and his or her staff can never hope to be as skilled and efficient at these things as people who do them full time. Over time, at least, the goal should identify providers of these services who are the best in their class and turn these functions over to them.

The way in which these functions are outsourced may depend on how the firm is structured and what it wants to do. The best way to deal with IT for a new firm with no infrastructure will likely be to retain a cloud hosting company that will host the firm’s file server create virtual desktops and assume all or substantially all hardware and software maintenance functions in exchange for a flat monthly hosting fee.

For a firm which already has local infrastructure, usually an in-house file server and a local area network, the best solution may be to contract with an IT support firm that will monitor the hardware, keep track of software updates, manage backups and provide on-demand support when technical issues arise.<sup>5</sup> Either way, the goal should be to free the lawyer from day-to-day responsibility for maintaining IT resources. Even if the lawyer is tech-savvy, there are others who will do it better and more efficiently because it is their training and it is what they do full time.

New lawyers may protest that hiring others to do all of these things will increase the overhead, and that is certainly true. However, having the lawyer perform

these low-value tasks is going to take time away from doing legal work, which pays more and which if used will generate enough revenue to cover the overhead and some profit besides. If the lawyer's time is underutilized because he or she has a short client list, then the excess time would be better spent recruiting more clients than doing things that will never justify a lawyer's rate, even if the impact on cash flow is negative in the short run.

### 3. DELEGATION AND TASK STRUCTURING

Another fact of law practice life is that much if not most of the work involved in *delivering* legal services to clients does not require the level of training of a lawyer and can be done just as well by less expensive, non-legal staff.

Viewed as a process, the life of a typical legal matter, whether it is a personal injury case, an estate plan or a DUI defense matter, can be broken down into phases, as follows:

**Phase 1:** Intake/collection of information

**Phase 2:** Review, research, analysis and planning

**Phase 3:** Execution

Where the office is specialized and has substantial experience with any given type of matter, Phase 1 activities usually do not require much involvement of the lawyer beyond making a decision as to whether or not to accept the client. The items of information needed to evaluate and prosecute the case are known from prior cases and can be listed on form letters or intake questionnaires that are prepared and sent out by non-legal staff and completed by the client.

Phase 2 activities do require the services of the lawyer, because researching the law, applying the law to the facts of the case and formulating case strategies are the essence of what lawyers are trained to do. However, the time required for these tasks is only a part, and usually not the largest part of the work required to complete any given matter.

The involvement of the lawyer in Phase 3 activities depends to a large extent on what kind of matter is being handled. In an estate planning or transaction practice, much of the work involves creating standard documents – wills, trusts, contracts, leases, etc., which can be drafted by staff from a template library. To do

this staff will need only general direction from the lawyer on what documents are needed and final review by the lawyer of the documents once the drafts are completed.<sup>6</sup>

If the matter is litigation that will end with a trial, the lawyer will be heavily involved in the trial proceedings and all of the work that goes with such proceedings, including research, preparation of motions, etc. However, much of the work even in litigated matters can also be handled by support staff if the office has substantial experience in similar cases. For example, routine pleadings, notices, interrogatories, document demands, etc. can be drafted by staff subject only to final review by the lawyer with templates from a library created from documents used in prior cases.

The extent to which work can be delegated to non-legal staff is heavily dependent on the level of experience that the office has with prior cases of the same type. If the office has done a hundred estate plans, the items of information needed to do the next one are well known and can be listed on form letters and intake questionnaires. On the other hand, if the office has little or no experience with estate plans, substantial lawyer time will have to be spent figuring out what is needed to process the first few that come along.

The same observation applies to virtually every area of practice. The more experience the office has with matters of any given kind, the easier it will be to delegate the mechanical work of drafting documents to non-legal staff because data requirements and document formats will have been developed from prior cases of the same type.

This is one of the many reasons why specialization makes business sense – it is efficient, because it allows substantial parts of the work in any given case to be delegated to non-legal support staff.

### 4. EFFICIENCY AND THE BOTTOM LINE

Lawyers who bill for their services based on hourly rates may well wonder whether the efficiency strategies discussed here make sense for them. If all services are billed hourly, is converting a six-hour job to a two-hour job through delegation, outsourcing and elimination of busywork going to increase revenue? Probably not, which may explain why traditional, large firms with



hourly billing budgets have not been particularly aggressive about getting efficient.<sup>7</sup>

On the other hand, firms that base their client bills on value to the client benefit from efficiency because they are able to produce more work with greater value to clients in any given period of time. For this reason, firms who take getting efficient seriously will find that they will have to move away at some point from hourly (i.e., cost-based) billing towards flat fees, incentive/contingent fees or other billing practices which are based on value to the client.

Ultimately, moving towards value billing will be a positive development with benefits for both the lawyer and his or her clients. For clients, it is surely better to get a bill based on value delivered rather than on the amount of time the lawyer devoted to it – which unfortunately may not correlate with client value in any given case.

For the lawyer, value billing creates the potential for very high rates of return on lawyer time – much higher than hourly billing rates would produce. As an example, estate plans that bill out at \$2,500 or \$3,000 can be prepared and delivered with three hours or less of lawyer time in a specialized estate planning firm – time that would have to be billed at \$800-\$1,000 per hour to reach the same end result with hourly billing.

The way in which efficiency is used will depend on the personal priorities of each lawyer. For some, getting efficient will mean taking on more work and improving the firm's bottom line. For others, e.g., practitioners with young children, it will mean maintaining an adequate income while having more time to spend outside of the office with the kids and the family. Either way, the rewards of getting efficient will be well worth the effort.

## ENDNOTES

- 1 Current versions of Dragon require a minimum of 8 GB of RAM to run efficiently, and 16GB is preferred. *See, e.g.,* SPEAKEASY SOLUTIONS, PC SPECIFICATIONS, [HTTPS://WWW.SPEAKEASYSOLUTIONS.COM/PRODUCTS/DAGON/PC-SPECIFICATIONS](https://www.speakeasysolutions.com/products/dragon/pc-specifications) (last visited June 7, 2019) (currently, 8GB of RAM is entry level for desktop and laptop computers and 16GB is available on computers priced at under \$800).
- 2 As of this writing, the cost of hard drives is about \$.02 per gigabyte of capacity, down from \$1 million per

gigabyte in 1967. *See* Lucas Mearian, *CW@50: Data storage goes from \$1M to 2 cents per gigabyte (+video)*, COMPUTERWORLD, (March 23, 2017) <https://www.computerworld.com/article/3182207/cw50-data-storage-goes-from-1m-to-2-cents-per-gigabyte.html>.

- 3 *See, e.g., Paperless Law Office*, LAWYERIST, (June 7, 2019) <https://lawyerist.com/management/paperless-office>; Richard Keyt, *A Simple Inexpensive Way to Create a Paperless Law Office*, LAW OFFICE TECHNOLOGY, (April 12, 2012) <https://www.keytlaw.com/lawofficetech/paperless-law-office>; Nerino Petro, *4 Steps to Create a High Functioning Paperless Law Office*, THOMSON REUTERS, (last visited June 7, 2019) <https://store.legal.thomsonreuters.com/law-products/solutions/firm-central/resources/paperless-law-office-procedures>.
- 4 George Bradt, *Why You Should Outsource All Your Support Functions*, FORBES, (July 3, 2017) <https://www.forbes.com/sites/georgebradt/2017/07/03/why-you-should-outsource-all-your-support-functions/#2a64f2e61795>.
- 5 Until recently, firms that needed IT infrastructure that would support file sharing, calendar functions, etc. among multiple users were obliged to build local infrastructure to support these services. Now, however even firms with their own local infrastructure may find that it is better and cheaper to close down the local LAN and use a cloud-hosting service, at least where internet connections are fast and reliable. *See, e.g.,* Deckler, *Cloud vs. On-Premises Costs*, FUSION ALLIANCE, <https://www.fusionalliance.com/wp-content/uploads/2016/07/faCloudOnPremisesFoundations.pdf>, (concluding that cloud hosting is approximately 30% cheaper than on-premises, requires less time to implement and is better in many other respects than a local LAN).
- 6 In the author's estate planning practice, the lawyer dictates a "setup memo" for each new client which spells out (1) what the terms of the plan are and what templates are to be used, (2) what fee will be charged, (3) who is responsible for getting it done and (4) when it is due. This usually takes about 30 minutes, after which the plan documents are prepared by support staff. Final review by the lawyer rarely takes more than half an hour.
- 7 *See* Clay & Seeger, *2017 Law Firms in Transition, an Altman Weil Flash Survey*, ALTMAN WEIL at iv (2017) [http://www.altmanweil.com/dir\\_docs/resource/90D6291D-AB28-4DFD-AC15-DBDEA6C31BE9\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/90D6291D-AB28-4DFD-AC15-DBDEA6C31BE9_document.pdf) ("Ninety Four percent of respondents in this year's survey said that a focus on improved practice efficiency will be a permanent trend going forward. But only 49% of law firms said that they have significantly changed their approach to the efficiency of legal service delivery. This represents a frightening disconnect").

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# 5 Ways Lawyers Can Maximize Their Time

By Ritu Goswamy

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*The following is a guest blog post previously posted on the CEB blog in May 2018 by Ritu Goswamy, Esq. Ritu is a lawyer, author, and legal productivity consultant. Her New Billable Hour™ system allows lawyers to expand their time by billing themselves first. Ritu's first book, The New Billable Hour: Bill More Hours, Be More Productive, and Still Have Work-Life Balance, is available for free by emailing her at [ritu@newbillablehour.com](mailto:ritu@newbillablehour.com).*

As lawyers, we may think that there's not enough time to get everything done. When we feel like we're "spinning out," learning the latest time management hack just adds to our stress. We can't create more hours in the day, but can maximize the hours we have. Consider these five methods to maximize the hours in a day as ways to become more aware and in control of your time. When we are in control, the "spinning out" lessens and our focus deepens.

**Monotask.** Multitasking has been around for a long time, but recent research has shown that trying to do more than one task at a time actually hinders productivity. An article from *Time* goes so far as to say that multitasking is *bad* for us, because we're wired to be monotaskers. We need to learn to tackle one task at a time.

**Take breaks.** You've heard it before, but really, take more breaks! It's best to proactively take breaks instead of unconsciously falling into energy-draining, time-wasting activities. For an energizing break, you could breathe, take a walk, or hydrate.

**Slow down.** When you're rushing around and feeling stressed, time gets wasted because your brain isn't

functioning at its best. You end up attacking the project or task that screams the loudest to you. Hint: That project isn't usually the most important and can wait. When you feel rushed, take a deep breath and regain your composure. Then you'll be able to clearly see what *really* needs to be done next.

**Prioritize.** Face it, you won't get through your full to-do list today, tomorrow, or anytime soon. A list is important to track what must be done for your cases, business, and career, but most lists just drag us down. Lighten things up by putting deadlines in calendars, using case management systems to track cases, and setting aside time for big projects that never seem to get done. Each day choose one to three difficult tasks that must be done that day. By prioritizing those tasks, you'll *actually* get them done, and will feel like you're making progress on your list.

**Value your time.** To maximize your time, you must value it. We all have the same 24 hours in a day, how do you want to spend them? When you have a certain amount of cash in your pocket, you consider the best way to spend it. Value your time the same way. As you make choices throughout your day, consider whether you're spending your time in a way that aligns with your core values. For example, the core value of compassion for self and others could guide you in how you use your time.

By valuing our time and ourselves we can approach tackling our days from a centered place. When we then act from that place we can maximize our time and feel more in control of our lives and our law practice.

# Not as Easy as “ABC” ....

## The Status of Independent Contractors in California

By Cynthia Elkins

As California employers are well aware the issue of whether a worker is properly classified as an “employee” or an “independent contractor” has long been a concern. Misclassification can lead to liability for a myriad of wage and hour claims (e.g. failure to pay minimum wage and overtime, penalties for missed meals and rest breaks, and failure to reimburse business expenses among other potential claims, etc.). A finding of misclassification can also lead to employer liability for unemployment insurance, state disability insurance, social security contributions and unpaid workers compensation premiums.

Many state and federal agencies that regulate employees have their own rules and criteria upon which a determination of independent contractor status is made, including the Development Department (EDD)<sup>1</sup>, the Division of Labor Standards Enforcement (DLSE)<sup>2</sup>, the Internal Revenue Service<sup>3</sup> and the Division of Workers’ Compensation (DWC)<sup>4</sup>. These agencies can audit the independent contractor classification and a contrary finding can lead to significant liability. In addition, the Labor Commissioner’s office can issue a stop order prohibiting the use of such labor until workers’ compensation insurance is obtained covering the workers<sup>5</sup>.



**Cynthia Elkins** is the principal of Elkins Employment Law, founded in 1998, a firm devoted to the representation and defense of employers in all aspects of their employment-law and human resource legal concerns. Prior to starting her own practice, Cynthia held several positions with employment law firms.

### OLD TEST: RIGHT TO CONTROL - MULTI FACTOR COMMON LAW TEST

For decades, employers, courts and administrative agencies have relied on the California Supreme Court’s seminal decision in *S.G. Borello & Sons, Inc., v. Department of Industrial Relations* which set forth a multifactor economic realities test to determine whether an individual performing services could be classified as an independent contractor.<sup>6</sup> The test primarily involved a determination of who had the **right to control the manner and means of accomplishing the result desired -- the worker or the company?**

### NEW TEST: 3 PRONG “ABC” TEST

On April 30, 2018 the issue was addressed by the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court*<sup>7</sup>. The court’s decision makes it significantly **more difficult** to properly classify workers as independent contractors. In deciding *Dynamex*, a case brought by delivery drivers who were classified as independent contractors, the court relied on a standard referred to in other jurisdictions as the “ABC” test.<sup>8</sup>

In a lengthy discussion, the court details the policy reasons behind the various tests that have previously been used and determined that the “ABC” test would provide “more clarity” for employers, that this analysis is in line with the history of the California wage orders and the fundamental purpose of providing workers fair wages and basic protections, and will reduce opportunity for manipulation.

The *Dynamex* “ABC”<sup>9</sup> test asserts that all workers are **presumed** to be employees unless the hiring business demonstrates that the worker satisfies **each of three conditions:**

- (A) the worker is **free from the control and direction of the hiring entity** in connection with the performance of the work, both under the contract and in fact; **and**
- (B) the worker performs **work that is outside the usual course** of the hiring entity's business; **and**
- (C) the worker is **customarily engaged in an independently established trade, occupation or business** of the same nature as that involved in the work performed.

The *Dynamex* decision was limited to claims brought pursuant to the Industrial Welfare Commission (IWC) Wage Orders which define employees as those who “suffer to work” and employers as those who “permit to work.” The court specifically left open the issue of what implications this decision has on claims brought pursuant to the Labor Code.

## RETROACTIVE APPLICATION

The California Supreme Court did not address whether their decision was to be applied retroactively. On June 21, 2018, the court denied a petition for rehearing filed by *Dynamex* on this issue<sup>10</sup>.

Since *Dynamex*, a few lower courts have been asked to decide the issue of retroactivity. In *Johnson v. VCG-IS, LLC*<sup>11</sup>, a class action lawsuit brought in Orange County by exotic dancers who claimed they had been misclassified as independent contractors, in a ruling on a motion in limine, the court stated the “ABC” test did apply retroactively because a) judicial decisions are generally given retroactive effect and b) the *Dynamex* court did not state that its decision applied only prospectively, suggesting the decision should apply retroactively and c) the court denied *Dynamex*'s petition for rehearing.

Next, in *Garcia v. Border Transportation Group, LLC*,<sup>12</sup> the Fourth District Court of Appeal applied the “ABC” test retroactively in a case filed by a taxi driver asserting various wage and hour claims on the basis of misclassification. On summary judgment, the trial court ruled in favor of the defendants, and the driver appealed. While the appellate court did not officially address the issue as it was not briefed, the court found that the “ABC” test would apply

retroactively to the driver's wage order claims, but not to his non-wage order claims (including his overtime and wrongful termination claims).<sup>13</sup>

## 9TH CIRCUIT RULES RETROACTIVE APPLICATION

On May 2, 2019, in *Vazquez v. Jan-Pro Franchising Int'l, Inc.*<sup>14</sup> a unanimous three-judge panel of the U.S. Ninth Circuit Court of Appeals, found that California Supreme Court decisions typically have a retroactive effect and its ruling in *Dynamex* was no different. The Ninth Circuit also found that retroactive application of *Dynamex* did not violate due process and that the *Garcia* case “persuasive”. The case has been remanded to the trial court to consider the merits in light of *Dynamex*.

## APPLICATION OF DYNAMEX TO PAGA ACTIONS

In *Johnson*, defendants argued *Dynamex* does not apply to PAGA claims since such claims are based on Labor Code violations, not violations of wage orders. The trial court ruled that since the labor code requires compliance with the wage orders and *Dynamex* decision found that the “ABC” test applied to determine employee status under the wage orders, it follows that the “ABC” test also had to be applied to labor code claims seeking to enforce the wage order requirements.

The court concludes that *Dynamex*'s ABC test should be utilized to determine the employee/independent contractor issues in the case and the fact that the case is brought under PAGA did not compel a different result.

However, in *Garcia*, the court held that *Dynamex* **only** applies to claims arising out of California wage orders. “There is no reason to apply the ABC test categorically to every working relationship, particularly when Borello appears to remain the standard for worker's compensation.”<sup>15</sup>

## PENDING LEGISLATION

There are two bills that have been introduced this session on the issue of independent contractor status:

**A.B. 5 Worker status: independent contractors.** The bill, as originally introduced, seeks to codify the

decision in *Dynamex*. As amended, AB 5 would provide that the working relationship for **doctors, insurance agents, and securities brokers/advisers**<sup>16</sup> shall be governed by the test adopted by the California Supreme Court in the case of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*. On April 3, 2019 A.B. 5 passed Assembly Labor and Employment and will be considered next by the Assembly Appropriations Committee.

**A.B. 71 Employment standards: independent contractors and employees.** This bill, as amended, would establish that a determination of whether a person is an employee or an independent contractor for the purposes of this division shall be based on the multifactor test set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*. The bill would further provide that the individual factors set forth shall not be applied mechanically as separate tests, but shall be intertwined. Additionally, the test would apply to any determinations before an administrative agency or court.

A coalition named “I’m Independent”<sup>17</sup> is continuing to seek amendments to pending legislation to include other professionals, including lawyers, real estate agents, accountants, court reporters, and other individuals who have advanced degrees or are licensed by the state, to be exempted from the application of *Dynamex*. Many of these workers historically have been classified as independent contractors and wish to maintain that status.

## CONTRACT ATTORNEYS & SUPPORT STAFF AS INDEPENDENT CONTRACTORS IN LAW FIRMS

The use of contract attorney and support staff positions such as paralegals as independent contractors is nothing new to the legal profession. However, unless A.B. 5 is further amended, the continued classification of such workers may very likely fail the ABC test due to Part B -- the worker performs **work that is outside the usual course** of the hiring entity’s business - as a contract attorney or a contract paralegal is in fact performing work that is within the usual course of the hiring firm’s business.

## CONCLUSION

In the wake of these recent decisions, and until such time as the pending legislation moves forward or additional decisions are published to provide greater guidance on the application of the “ABC” test, it should be anticipated that *Dynamex* will be applied retroactively. It will also be important to assess the application of *Dynamex* to non-wage order claims following *Garcia*<sup>18</sup> or to claims against alleged joint employers<sup>19</sup>.

## ENDNOTES

- 1 [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de38.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de38.pdf).
- 2 [https://www.dir.ca.gov/dlse/FAQ\\_Independent\\_Contractor.htm](https://www.dir.ca.gov/dlse/FAQ_Independent_Contractor.htm).
- 3 <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.
- 4 See CAL. LAB. CODE § 2750.5.
- 5 CAL. LAB. CODE §§ 3710.1 *et seq.*
- 6 *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).
- 7 *Dynamex Operations West. v. Super Ct.*, 4 Cal. 5th 903 (2018).
- 8 *Dynamex Operations West*, 4 Cal. 5th at fn. 23 (citing MASS. GEN. LAWS ch. 149, § 148B; DEL. CODE ANN. tit. 19, §§ 3501(a)(7), 3503(c)).
- 9 *Dynamex*, 4 Cal. 5th at 57.
- 10 *Id.* at 903, (*rehearing denied* June 20, 2018).
- 11 *Johnson v. VCG-IS, LLC*, No. 30-2015-00802813, (Cal. Super. Ct. July 18, 2018) (*ruling on motion in limine*).
- 12 *Garcia v. Border Transp. Group, LLC*, 28 Cal. App. 5th 558 (2018).
- 13 *Id.* at 572 n.12.
- 14 *Vazquez et al. v. Jan-Pro Franchising Int’l., Inc.*, No. 17-16096 (9th Cir. 2019).
- 15 *Garcia*, 28 Cal. App. 5th at 571.
- 16 As of the writing of this article the amended language does not include attorneys within the exemption.
- 17 I’M INDEPENDENT COALITION, [imindependent.co](http://imindependent.co) (last visited June 7, 2019).
- 18 *Garcia*, 28 Cal. App. 5th at 571.
- 19 *Curry v. Equilon Enters., LLC*, 23 Cal. App. 5th 289, 314 (2018).



# Q&A with Recipients of CLA Excellence Awards



## Sheila-Marie Finkelstein

By Renee N. G. Stackhouse

### 1. WHAT WAS YOUR BACKGROUND PRIOR TO BECOMING AN ATTORNEY?

I grew up volunteering with the Long Beach Veterans Affairs, and through various charitable organizations at school, where we designed, coordinated and implemented our own charitable endeavors. (“Kards 4 Kosovo, Secret Santa for Sonora, etc.)

While in college, I planned to go straight to law school but was recruited to be a corps member with Teach for America. I deferred law school to be an elementary school teacher in economically depressed schools. I completed training at Grape Street Elementary in Watts, California and was stationed in Las Vegas, Nevada. While teaching at-risk students, I earned my Masters in Education and developed an elementary school science program that integrated state math, science, and literacy standards. In the first year of implementation, my program exponentially increased school wide science achievement scores. I was a very successful teacher in terms of student achievement/academic improvement. I found teaching to be very fulfilling and enjoyed combating educational inequality. Yet, my students pushed me to pursue my original goal of becoming an attorney. (They essentially called me a hypocrite for encouraging them to pursue their dreams while I “settled for being a teacher when I wanted to be an attorney.”) As a 2L, I clerked for the United States Air Force JAG corps.

### 2. HOW DID YOU BECOME A SOLO/SMALL FIRM (SSF) PRACTITIONER?

How: I had been told more times than I can track that I should go solo based purely on my networking/pro bono activities. However, I appreciated the

stability of working for an established firm. I reevaluated my work/life balance after a life-threatening pregnancy and decided to explore the possibility of going solo. I took Law Practice Management with Professor Monica Luckosheck at Chapman School of Law. During the course I developed a business plan for my own firm and began to seriously consider the possibility of going solo, although I was extremely risk-averse. Then my father unexpectedly passed away Father’s Day 2018 and I experienced the cliché “Life is short,” so I decided to take the risk and launch AHAVA Law, P.C.

Why: I want my professional pursuits to align with my personal values. I want to be able to engage in my professional passions as well as to be active and present in my family life.

### 3. WHAT IS YOUR FAVORITE ASPECT OF BEING SSF?

The ability to select the matters I take and create my own schedule so that I can volunteer when/where I want while staying actively engaged in my family life.

### 4. WHO HAVE BEEN YOUR MENTORS OR ADVOCATES IN THE LEGAL PROFESSION?

It really does take a village. In no particular order:

Legal Mentors: Tara Burd, Esq., Robert Finkelstein, Esq., Hon. Brad Erdosi, Esq. (formal mentor through OCBA Young Lawyers Division), Michael Baroni, Esq. (formal mentor through OCBA Young Lawyers Division), Alan Davis, Esq., Monica Luckosheck, Esq. (formal mentor through Chapman University School of Law), Rose Amezcua-Moll,

Esq., Sarah Nowels, Esq., William Peacock, Esq., Hon. Eileen Moore, Esq., Antoinette Balta, Esq., Dwight Stirling, Esq., Michelle Philo, Esq., and Jordon Steinberg, Esq.

Non-Legal Mentors: Rabbi Leo Abrami, Dr. Stuart Finkelstein, Jessie D'Agostino, and Evelyn Finkelstein.

## **5. WHAT ORGANIZATIONS HAVE YOU PARTICIPATED IN THAT HAVE POSITIVELY IMPACTED YOU/YOUR CAREER?**

Orange County Bar Association (“OCBA”), Orange County Jewish Bar Association (“OCJBA”), Orange County Women Lawyer Association (“OCWLA”), Veterans Legal Institute (“VLI”), Orange County Bar Association – Veterans and Military Committee (“VetCom”), and Orange County Bar Association – Young Lawyers Division (“YLD”)

## **6. WHAT ADVICE WOULD YOU GIVE TO THOSE NEW TO SSF LIFE?**

Do as much research as you can, and sample as many programs as you can prior to committing to any contracts, i.e. law practice management software, phone carriers, legal software, etc.

Develop strong personal relationships with professionals you trust who will support and encourage you in your journey (as well as provide honest constructive feedback).

You can't do everything – do what you do well (i.e. lawyering) and get help with the rest (i.e. building a website, accounting, etc.).

## **7. WHAT INSPIRES (INSPIRED) YOU TO DO WHAT YOU DO (GIVING BACK TO OTHERS);**

I was inspired to become a lawyer when studying for my Bat Mitzvah. My *Torah Parshah* declared “*Tzedek, Tzedek, Tirdof*” (“Justice, Justice, Shall you pursue”). At the same time was studying Martin Luther King, Jr. in school. Dr. King proclaimed, “Injustice anywhere is a threat to justice everywhere.”

I was inspired to join Teach for America instead of going directly to law school, because I realized that the difference between myself (almost a college graduate with several options before me) and many

of my peers from growing up (high school drop outs, imprisoned, flipping burgers with no real future, etc.) was the quality of education I received based on the combination of engaged teachers and supportive parents.

I find fulfillment and meaning in using my knowledge, skills, and mindset to pursue justice for others. I choose to focus my efforts on Veterans and Service Members because they literally put their life on the line to protect our freedoms. I also prioritize women and Jewish charitable pursuits because I am a Jewish Woman.

I continue to be inspired by the people I work with in the pursuit of justice for all.

## **8. WHAT WORDS OF INSPIRATION CAN YOU SHARE TO MOTIVATE US?**

“Injustice anywhere is a threat to justice everywhere” – Martin Luther King, Jr.

“Justice, justice, shall you pursue” – Torah

“If not now, when?” – Unknown

“This too shall pass” – Torah/Fitzgerald

“I don't care if you want to be a stay at home mother, you're going to college first!” – my mother (Jessie D'Agostino)

“Don't cry over things that can't cry over you.” – my father (Dr. Stuart Finkelstein)

“Whatever you choose to do, be the best at it” – my father (Dr. Stuart Finkelstein)

## **9. WHAT DOES RECEIVING THE EXCELLENCE AWARD MEAN TO YOU?**

I strive to positively contribute to society for very personal reasons, without expectation of reward or even acknowledgment. However, receiving this award is so very appreciated not only because of the recognition of my efforts, but also because it provides external validation for my professional decisions (to start my own firm) and pro bono services.

# Q&A with Recipients of CLA Excellence Awards



## Norma Williams

By Renee N. G. Stackhouse

### 1. WHAT WAS YOUR BACKGROUND PRIOR TO BECOMING AN ATTORNEY?

Prior to becoming an attorney, I was a student in college and law school.

### 2. HOW DID YOU BECOME A SOLO/SMALL FIRM (SSF) PRACTITIONER?

I have had two experiences as the owner of a small firm, both between positions at large law firms or corporations. I have always practiced in the same area of law (commercial real estate transactions). I welcomed the opportunity to work on those types of matters in an environment where I had more control over my practice and time. However, my practice in the firms and corporations definitely contributed to the expertise and skills that I have needed in order to run my own shop.

### 3. WHAT IS YOUR FAVORITE ASPECT OF BEING SSF?

I like the independence and the ability to make decisions about all areas of practice including the work, marketing, bar association service, billing practices and staffing on matters. It also allows me to balance my work with my personal life.

### 4. WHO HAVE BEEN YOUR MENTORS OR ADVOCATES IN THE LEGAL PROFESSION?

Several of the partners in the first firms where I practiced were mentors. They taught me to be rigorous in my ethics and in my work and to practice as if I needed to know everything about matters on which I worked. Later in practice, I was inspired by women with demanding legal, political and other

public careers who nevertheless managed to maintain their family lives and their humanness. Lately, I am drawn again to lawyers who display the rigor that I saw as a young lawyer.

These are now real estate attorneys at the top of the profession nationally and internationally who contribute countless hours of service out of a sense of personal responsibility to constantly improve the practice and the profession.

### 5. WHAT ORGANIZATIONS HAVE YOU PARTICIPATED IN THAT HAVE POSITIVELY IMPACTED YOU/YOUR CAREER?

There have been several. I have been most involved with the American College of Mortgage Attorneys, a group of highest level practitioners, many of whom are close friends. I have held many offices in ACMA and am presently the California State Chair, responsible for first approval of all California nominees and for the State's contribution to the Mortgage Law Summary published by the College.

American College of Real Estate Lawyers is also a great involvement. I am also proud of my involvement with the Real Property Section of the Los Angeles County Bar Association where I became Chair of the Executive Committee.

### 6. WHAT ADVICE WOULD YOU GIVE TO THOSE NEW TO SSF LIFE?

I think that it is very important to practice what you know and do best. I also think that it is important to develop a support network-colleagues to consult

with and those who can assist with secretarial, marketing, technology and other needs.

Generally, just to “stay connected” and not become isolated.

**7. WHAT INSPIRES (INSPIRED) YOU TO DO WHAT YOU DO (GIVING BACK TO OTHERS);**

The first thing is that I love what I do. I also think that at heart I am a teacher who likes to see others develop and grow. I enjoy sharing my experiences, skills and knowledge if I think that it can help others to grow and succeed.

**8. WHAT WORDS OF INSPIRATION CAN YOU SHARE TO MOTIVATE US?**

Just keep going.

**9. WHAT DOES RECEIVING THE EXCELLENCE AWARD MEAN TO YOU?**

I am so honored to receive the Award and the recognition that it represents. I know that this year was the inaugural Award and that there were many nominees statewide. I was also very touched by the words of my nominators and those who wrote letters of recommendations.



# Q&A with Recipients of CLA Excellence Awards



## Summer Selleck

By Renee N. G. Stackhouse

### 1. WHAT WAS YOUR BACKGROUND PRIOR TO BECOMING AN ATTORNEY?

Prior to becoming an attorney, I was a student, a teacher, and an activist. Through my entire journey I've always had a strong work-drive, which has often been powered by defeating challenges the world around me has set. From those challenges I've developed a passion for turning the doubts of others into my own personal challenge, which is what I did when I became a lawyer.

### 2. HOW DID YOU BECOME A SOLO/SMALL FIRM (SSF) PRACTITIONER?

I've always liked to "color outside the lines". What that equates to professionally is a personality that finds greater success when not stifled or controlled. Therefore, the idea of being my own boss has always been attractive to me. I enjoy the independence of being a solo practitioner and being able to manage my own time, cases, and clients.

### 3. WHAT IS YOUR FAVORITE ASPECT OF BEING SSF?

I love the autonomy to take on the cases I choose and decide what I'd like to put my time and energy into. I made a conscious decision early on in my career that there are enough attorneys in California to refer cases to if the client and I don't have a connection. So, if I don't feel passionate about the issue or the client and I aren't the right fit, I allow myself to pass on the case to another attorney who I know will be a better fit. This allows me to have meaningful relationships with all my clients and really love what I do and why I do it!

### 4. WHO HAVE BEEN YOUR MENTORS OR ADVOCATES IN THE LEGAL PROFESSION?

Generally, I have been mentored by all the women who've served with me on the California Women Lawyers Board from 2015 until present. I am also forever indebted to all the women who came before and all the supporters of women who helped get us all one step closer to equality.

Without the friendship and mentorship of Renee N.G. Stackhouse, Suzette Torres, Carolyn D. Cain, Douglas W. Housman, and Dr. Raul Deju I would not be the lawyer or person I am today.

I am exceptionally grateful to my family for all their support and love. Mostly I am thankful to my wife, Andi, for loving me through it all.

### 5. WHAT ORGANIZATIONS HAVE YOU PARTICIPATED IN THAT HAVE POSITIVELY IMPACTED YOU/YOUR CAREER?

I've been an active member on Contra Costa County Bar Association (CCCBA) on the Women's Section, Diversity Committee, Barristers Section, and Solo and Small Firm Section. I have also been a member of the Board of Directors of the CCCBA since 2015. I've been a part of the Women's Commission in Contra Contra Costa County and the Aging Commission. However, the organization that has most positively impacted my career has been California Woman Lawyers (CWL). CWL has been integral to my development as an attorney and as a person these past few years. I have created life long bonds with attorneys from all areas of law that practice up and down the state of California. This

group not only does incredible and positive things such as support of amicus briefs, judicial applications and legislation, but CWL is also the greatest group of professional support I have ever experienced.

#### 6. WHAT ADVICE WOULD YOU GIVE TO THOSE NEW TO SSF LIFE?

Ask for help. Many of the extraordinary people I know have the belief that once you get to the top of your personal mountain, it's your duty to reach back down and lift up the person behind you. The people who are starting out at the bottom of the mountain don't realize the resources, or hands, that are awaiting them if they just ask.

#### 7. WHAT INSPIRES (INSPIRED) YOU TO DO WHAT YOU DO (GIVING BACK TO OTHERS);

My mom always instilled in me a sense of giving back. She was the first one who explained to me the

concept of reaching back down to help others once you get to the top of the mountain. I've practiced that in my personal life, and more recently have been able to apply that to my professional life.

#### 8. WHAT WORDS OF INSPIRATION CAN YOU SHARE TO MOTIVATE US?

Be kind. At the end of the day, people will do what they're going to do, but if you continue to be a good person, nothing can hinder your path.

#### 9. WHAT DOES RECEIVING THE EXCELLENCE AWARD MEAN TO YOU?

Receiving the award is a great honor because I know there were many deserving people who were nominated. I've been humbled by the support from my sisters and brothers in law, those who have nominated me and shown me a kindness that I'll never forget.

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# Perspectives on Solo Practice: Different Views From The Trenches

By Kris Mukerji

I graduated law school in May 2012 and started my law practice in January of 2013. I always knew that I wanted to have my own practice, but although you learn the law in law school, you do not learn the business of law. Most people will graduate law school and look for a government or private firm employment and will never have to focus on running a business. For those who want the independence and desire to own their own business, they have to focus on not only being a lawyer but also a business owner. Although I was lucky that my law school provided an introductory course on how to start a solo practice, the course did not offer details about owning a law practice.

Before starting my practice, I made it a priority to meet with several top attorneys in San Diego to discuss not only substantive legal issues, but also to get tips on how to grow and manage a law practice. I read books such as “E-myth” and “E-myth Revisited” so that I could hit the ground running.

In today’s modern age, we are lucky to have a plethora of resources at our fingertips that make owning, managing, and running a practice much easier than its ever been. We understand that time is money, and if you are spending your time on things that do not bring in money, then you are losing money. With technological and software developments we now have the ability to utilize tools such as practice management software, book keeping software, and court e-filing options to make running a business more efficient.



**Kris Mukherji** is a business attorney in San Diego. He provides personalized legal service covering all aspects of Business Law. Mukherji graduated from the University of California San Diego and after working for five years in the health and fitness industry was admitted to Thomas Jefferson School of Law in 2008. During law school, Mukherji interned for private firms and the San Diego District Attorneys Office. Mukherji graduated from TJSU in 2012 and through the guidance of several mentors in the legal community, started the Law Office of Kris Mukherji. His practice focuses primarily on estate planning/probate and business law. He is a member of the San Diego County Bar Association; South Asian Bar Association of San Diego; Consumer Attorneys of San Diego; and American Bar Association.

At its core, running a practice is about finding out your strengths and capitalizing on them. We have all heard that there are three types of lawyers: (1) Rainmakers; (2) Facilitators; and (3) Technicians. When you first start your practice, you have to be all three. However, as your practice grows you have to find out what your strengths are and then hire the right people to help with the other areas. If you are a great rainmaker, then sitting at your desk doing technical work may not be the best fit for the long-term success of your practice.

I had the opportunity to speak with a few solo practitioners who provided insights on how they run their practice and what advice they would give to new attorneys.

## VALERIE HONG

Valerie Hong started her law firm Garcia Hong Law 8 months ago. Prior to starting her practice, she worked for 10 years at a mid-size firm and was a partner for 4 years where she had the opportunity to learn about the business side of law. Her practice focuses primarily on business litigation and appellate work.

**1. What are some areas of difficulty with being a lawyer who is also a business person:**

- a. When I made the decision to leave a larger law firm, I created a detailed business plan. In practice, it is challenging to stay focused on the larger business plan and strategy, while balancing it with the day-to-day fires that ignite with litigation.

**2. How do you generate business:**

- a. I continue to network and build relationships with business leaders and “centers of influence” in communities that speak to or identify with me (e.g. small businesses, start-ups, and minority-owned/women-owned companies). I also use a marketing professional to assist me with online marketing.

**3. Do you do any marketing (print social media etc):**

- a. Yes, I support and sponsor organizations and events where my clients are. Maintaining relationships is important to me and I value my clients by supporting their events (e.g. financially, volunteering time, or attending). I also use traditional print marketing in publications that serve small businesses and ethnic communities where a “familiar face” is important in the selection of an attorney. I also use Google AdWords and social media platforms like Facebook and LinkedIn to raise awareness of the firm’s successful outcomes and practice areas.

**4. What software do you rely on in your practice:**

- a. Clio, Quickbooks, Outlook, LawPay, LexisNexis, and Google Voice have been wonderful resources to start a small practice. Clio is a central dashboard that handles all my case management, including billing. The invoices that are generated by Clio are professional. Clio also has an unlimited cloud-based storage system and allows for easy sharing with clients and opposing counsel.

I also create a separate Quickbooks profile for my operating account and the IOLTA trust account. This allows me to keep accurate records of client funds and prevents any commingling of funds. As an attorney with a limited accounting background, I find Quickbooks to be confusing and cumbersome. I rely on my bookkeeper and a tax attorney to assist me with keeping my financials in order.

**JEFF MACH**

Jeff Mach, started his law firm Mach Law almost 11 years ago. His practice focuses primarily on Family law. Jeff talked about issues with certain software and what he focuses on when dealing with employees and contractors.

**1. What software do you rely on in your practice:**

- a. We use Abacus. It has a steep learning curve and we have encountered multiple problems with their software. If I could do it all over again, I would not use their software. Additionally, we also use Quickbooks for bookkeeping.

**2. Do you work with a payroll company?**

- a. Yes we use Paychex and love them.

**3. What do you focus on when hiring employees:**

- a. Do they have industriousness? Enthusiasm for the job? Those are the cornerstones for success. Are they hungry to learn and succeed? Are they a team player? Do they have a strong desire to help others?

**4. Have you ever fired an employee:**

- a. No, but I would recommend talking to your mentors and an employment law attorney before you do anything.

**5. What is the best advice you can give to an attorney who wants to hire a paralegal or admin or associate:**

- a. Depending upon whom you hire, it can be a blessing or a nightmare for your team. I would recommend a detailed and thorough hiring process. Know what your firm requires and find the person that will help you serve your clients.

## **VAANI CHAWLA**

Vaani Chawla has been practicing since 1992. Upon graduating law school she worked at Gray Cary Ware & Friedenrich, now known as DLA. In 1994 left to start the Chawla Law Group, which focuses on Immigration Law for employers, families and investors.

Vaani talked about how she generates business, maintains client relationships and software that she utilizes in her immigration practice. She also addressed the difficulty in terminating an employee.

### **1. What are some areas of difficulty with being a lawyer who is also a business person?**

- a. Limited time and managing administrative business deadlines in addition to law practice related deadlines. Vacations always involve work. Billing takes up a lot of time, and I think my process is not efficient enough. This brings me to the most difficult part of owning the business: trying to make sure that our processes are efficient. This involves reviewing what we are already doing and trying to find new methods to improve. As important as this is, it takes time away from ongoing cases that need attention. As a consequence, I often take a long time to make changes to the practice. The clients come first!

### **2. How do you generate business?**

- a. My practice is primarily referral based. The vast majority of my business originated from attorney referrals. Then those clients referred other clients to me. It has mushroomed from there.

### **3. Do you do any marketing (print social media etc)?**

- a. Other than a mediocre website, I send out cards to a list of attorneys and clients twice a year. I am also active with a few bar organizations, but I don't attribute this as a major source of client business.

### **4. What software do you rely on in your practice?**

- a. I use AILALink for legal research. AILALink is produced by the American Immigration Lawyers Association. AILALink is a good source for research in my field, but I supplement it with some hard copy AILA publications. I am also a member of AILA, and AILA's member website includes a lot of additional research tools. I currently use eimmigration for legal forms, but I am planning to move to bluedot. eimmigration is fairly simple and relatively inexpensive to use, which is why I have used it for many years. eimmigration supposedly has electronic questionnaires we can send to clients to complete, and these questionnaires are supposed to auto-populate immigration forms. But I have found that their questionnaires are not detailed enough. Our own in-house questionnaires are much more detailed, so we end up using our own questionnaires instead of those produced by eimmigration. Bluedot is more expensive than eimmigration, but it provides detailed electronic questionnaires. I am planning to make the move to improve efficiency. Even though a lot of software options, including Bluedot and eimmigration offer case management software that tracks deadlines, I don't use these. I had the experience of trying to leave another software vendor years ago, and I was able to leave without issue because I did not rely on their case management module. Instead, we were using Outlook to track deadlines. This gave us the freedom to move from one vendor to another. I know another immigration lawyer who was using software he did not like. He remained with the vendor because he feared losing critical data if he moved. Even though companies offer data migration

services, it is difficult to be sure that all of the necessary data has correctly migrated to the new system. This is a critical issue when you have a high volume practice.

## 5. Have you ever fired an employee?

- a. Yes. This is a very difficult matter, particularly when you know that the employee is a good person but just needs a different work environment in which to thrive. I advise having regular conversations about performance and documenting those conversations. Give the person a chance to improve and let him or her know how much time you are allotting to see that improvement. If the person still does not

measure up, be kind but firm. Let the person know that it isn't working out. In one case, I also suggested that the employee was better suited to the more structured environment of a large law firm where a person can be trained first on small parts of cases and then on incrementally larger and larger matters

These different perspectives offer different benefits for other solos and small firm practitioners. I the view from the trenches from these experienced attorneys, at different stages in their solo and small firm careers, provides you with some guidance on your own journey to building a successful practice in your own style.

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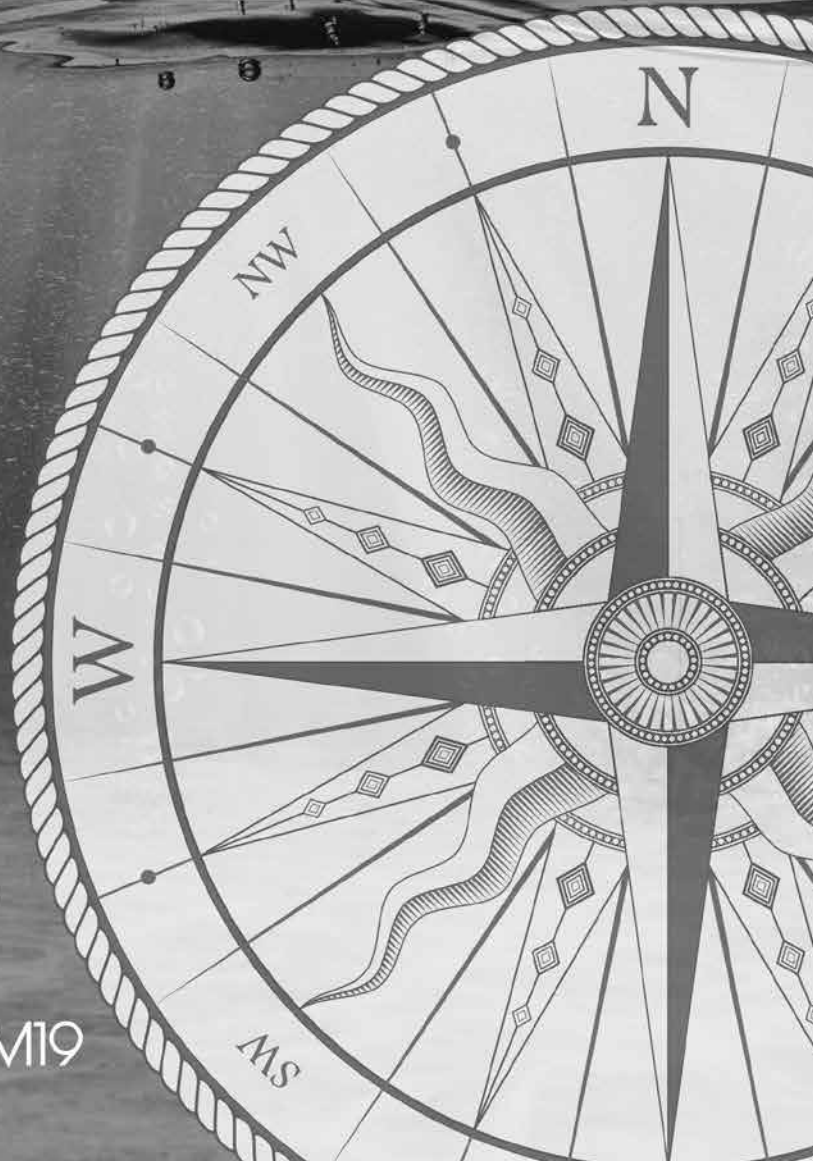
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