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Letter From the Chair

By Sabrina L. Green



Sabrina Green is a managing partner of Stratton & Green, ALC and focuses on labor & employment, complex business litigation. Besides being the Chair of the California Lawyers Association Solo and Small

Firm executive committee, member of the CLA Board of Representatives, she is the Attorney Coordinator for the Thomas Jefferson School of Law Employee Rights Public Clinic, member of the executive committee for the Thomas Jefferson Alumni Board of Directors, Vice President of Executive Women's Council and a member of the Board of Directors of the Hong Kong Business Association of Southern California, San Diego. Sabrina can be reached at sgreen@sglawcorp.com.

THE JOURNEY CONTINUES

Immediate Past Chair Renee Stackhouse has done a wonderful job as chair of the California Lawyers Association's Solo & Small Firm Section. We have all admired her leadership and vision for the Section, especially through the support to programs like #WebinarWednesdays, Symposium on Solo Success, a growth of the Section's Executive Committee, and her launch to update the Section's solo and small firm practice book.

I am surprised to be in the position of writing this letter honoring Renee's great work and leadership. Jeremy Evans, former incoming Chair, has now been elected as Vice President of the California Lawyers Association and Jeremy's appointment has advanced me into the honor to now serve as your Chair.

Going forward, you can expect the same great programs and more. We will look to expand and grow the *Symposium on Solo Success*, to make it a premiere biannual event occurring in Northern and Southern California and will be targeting more underserved regions for these events as well as other programing. It is an important goal to me this year to engage with not just SSF members in the large metropolitan areas, but also in the smaller cities and rural communities where hard working SSF attorneys often find it difficult to locate and participate in onsite programs.

Of course, we will resume our terrific work with the outstanding California Lawyers Association staff on the annual *Solo Summit*, which was recently held in beautiful Huntington Beach.

You can look forward to continuing to receive excellent, relevant content in our printed, quarterly publication *the PRACTITIONER*, and in your monthly e-news source, *the ADVISOR*. We will be diligently working on our Section's book that will provide comprehensive insights, considerations and education on starting and running a law practice that will provide all existing and soon-to-be members with an outstanding resource.

How can you help? Simple, get involved. Solo and small firm practitioners represent the largest percentage of attorneys in California. Our members practice in every arena of the law and comprise a wonderfully diverse community. Together, let us grow the Solo and Small Firm Section and support the

the PRACTITIONER FOR SOLO & SMALL FIRMS

Editor
Joshua Bonnici, josh@bonnicilawgroup.com

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growth of the California Lawyers Association as well as each other. There are countless ways to get involved including joining the section, becoming an advisor or member of the executive committee, or simply letting us know if there is content or programing you would like to see from us. Want to educate members yourself? Contact us about speaking at a program or recording a webinar. We are always looking for members who have educational topics they want to provide to the Solo and Small Firm community. Coming from a civil rights practice mindset, I strongly believe the more members involved, the more diverse views and ideas we develop which allows us to better serve you, the Solo and Small Firm community.

On behalf of myself and the entire Solo and Small Firm executive committee, thank you for your membership input, participation and please know you inspire us. We look forward to serving you in the upcoming year.

P.S. Remember, by joining the California Lawyers Association and picking a Section for \$95.00, you automatically get access legal research through Fastcase!

Sabrina L. Green

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Letter from the Editor-In-Chief

By Joshua Bonnici

As the incoming Editor in Chief to *The Practitioner*, I knew I had big shoes to fill from the fantastic job Somita Basu did last year, and am grateful for her help in getting me started! The opportunity to organize a publication that serves a business genre I'm passionate about excited me. I've now had my own small law firm for over seven years, starting as a solo in 2012. There is something special about building a small team and equipping them to carry out your vision on how to not only work up cases, but make a difference in the lives of your clients and in your local community.

We've all heard the saying "time is money," but when applied to an hourly rate, or time put into a contingency case, there is no truer saying. In order for a successful small practice to thrive, one must be time efficient in all aspects of the business. While attorneys are often great purveyors in their legal field, getting the client in the door and retained is often a struggle without a large marketing budget or client retention team. In the upcoming 2020 issues, I will have themed issues on topics solos and small firm owners often encounter, and that can be difference makers in whether an office succeeds or flounders in the waves of the competitive California legal market. These articles should address many of the "hats" we are required to wear when running our offices, hopefully allowing us to connect with clients who need our legal help.

In this first issue, I gathered articles on ways small offices can differentiate themselves from larger firms in their area. It is a question we often receive during initial consults, on what makes our small office better (or at least a better fit) than the larger office in a high-rise overlooking the bay. How can we be expected to compete with law offices with over 100



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years combined experience and large marketing budgets? These authors share some secrets which they have used to show how they go the extra mile, or have a niche understanding to issues that larger firms may not be able to offer. While each situation may be unique, hopefully gleaned some successful theories and tactics will be just what you need to bring the number of signed retainer agreements to new levels.

We've also decided to include a few articles aimed at adding an extra arrow to your business-owner quiver. One article will help you understand and address the language barrier often presented in our multi-lingual state, so you can be best prepared serving clients whose native tongue is not English. Also, our CLE article addresses what happens in the case of a managing attorney's incapacity or death, and how to prepare for such an event to make sure your office is in compliance with the updated California Rules of Professional Conduct.

As the issues progress through 2020, we will be bringing you additional themes in efforts to help with each "hat" we wear as small business owners to fit better and more comfortably. I hope that these articles inspire you in how you think about your practice as a unique and thriving business, willing to go toe-to-toe with your biglaw competitors.

Memoriam for Philip Shapiro

It is with saddened hearts that Solo Small Firm Section Executive Committee must announce the passing of our dear friend and colleague, Philip Shapiro who passed away November 30, 2019. Philip was an extraordinary person. He was devoted to his family, the San Diego legal community, and to the SSF community where he served on the ExCom since the late 1990s.

Philip A. Shapiro was born in Chicago, Illinois. He enlisted in the Marine Corps after high school. After active duty, he went to Southern Illinois University for his undergraduate degree. Immediately after graduation, Phil was commissioned as a Special Agent in the U.S. Secret Service. He then went on to graduate school at National University and received his MBA degree.



Committee Chair Sabrina Green with Philip Shapiro

Graduating from Thomas Jefferson School of Law (then Western State) in 1985, he was the Law Review co-editor. Phil practiced law in partnerships and solo practice beginning in 1988. In 1998, he was awarded the "AV Preeminent" rating from Martindale-Hubbell. He received the A. Thomas Golden Alumnus of the Year Award in 2006 from Thomas Jefferson School of Law.

While Philip had a legendary professional life, it will be his wit, humor, friendship and support that everyone will always remember. He will be dearly missed.



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Three Magic Ingredients That Make an Effective Solo Attorney

By Yasmine Djawadian



Yasmine Djawadian is the Founder of Law Offices of Yasmine Djawadian APC. Ms. Djawadian is an award-winning attorney representing personal injury victims in San Diego, CA. To date, she has recovered over \$45 Million in settlements or

verdicts for her valued clients. Ms. Djawadian can be reached at yd@ydlawca.com or by visiting her website, www.ydinjurylaw.com.

What is unique about being a solo practitioner is that we are essentially legal jugglers who wear multiple hats at any given time. Through our hard work, efforts, and ambitions, we have been blessed with the opportunity to help people in significant and life-changing ways. Given the multitude of hats we wear, as well as the amplex of competition, we need to ask ourselves the following: how do we distinguish ourselves from the rest? The secret lies in the magic ingredients that add flavor to the many hats we wear.

MAGIC INGREDIENT TO BEING AN ADVOCATE: PASSION

Being an attorney is a privilege. As attorneys, we are gifted with the ability to often give a voice to those that need to be heard. We are equipped with the ammunition of knowledge, intellect, research, and dedication to fight on our clients' behalf. In order to be an advocate, we need to be passionate about what we do. Passion is what turns a case from mediocre to extraordinary – and truly sets you apart from firms down the street who want to fill their bookcase full of case files. This means that as our clients' advocates, we cannot treat our clients' case as just another case. By throwing in the spice to your cause (aka passion), you will not only set yourself apart but gain a reputation as a true fighter!

Tips for Solo Attorneys: In order to add passion to our jobs as solo attorneys, we need to make sure we

actually love what we do. In order to ensure that we enjoy our craft, it is imperative that we do not become “too big.” There is nothing wrong with being a “volume type” office, where quantity is high priority. After all, there are plenty of law firms all over the state that embrace this type of business model. However, if you would like to distinguish yourself from the rest, it is imperative that you dedicate yourself wholeheartedly to every single client – and make sure each and every client realizes and recognizes your effort. You must know each and every one of your clients personally. Make sure you call them and meet with them periodically. Keep them in the loop. Be known as the attorney who makes home visits, understands their clients on a personal level, and totally understands their plight. Be on a first-name basis with them. Get to know them and their family, their hobbies, their pets. Having a personal connection with your clients is what will set you apart from the rest.

As a personal injury attorney, I need to be a storyteller to the jury, and I must have a true understanding of who my client is and what they have been through. What better way of showing the client that than knowing that by totally investing in them and knowing their entire situation – i.e. case facts, injuries, living situation, effect on family – to a point where the jury has no other reason but to believe me and award them damages they deserve.

MAGIC INGREDIENT TO BEING AN OFFICER OF THE COURT—INTEGRITY

Being an effective attorney means being professional, prepared, and respectful. This is something clients can see, and reputations can show when clients are referred from colleagues – even across the aisle. As officers of the court, we shall never forget our roles. Prepared and lively written or oral argument before a tribunal is an honor. Banter, interruption, and blatant disrespect for the court are not only a dishonor to our judicial institutions but a poor reflection of our character. The key ingredient to being an effective officer of the court is integrity. Having integrity is what makes us respected and effective officers of the court. Our reputations as attorneys are the most valuable asset we can have. By having a demeanor of integrity we can be sure to maintain and build on our reputation.

Tips for Solo Attorneys: Have integrity inside and outside of the courtroom. In fact, have integrity outside of your office. In this day and age, every person's private life is up on display for the world to see. If you are a solo practitioner with a beautiful and extensive website that highlights what you do and why people should hire you, you need to follow this type of standard in your personal life. This goes without saying, but do not post inappropriate content on social media. You can assume that potential clients look at your personal social media accounts just as much as we do when deciding whether to take on a client's case. Do not post photos that could even be remotely interpreted as unprofessional. If you are a solo attorney with a small support staff, you have the luxury of controlling what images you would like to portray to the world. This gives you an advantage compared to much larger firms with dozens or even hundreds of attorneys that are out of the firm's control. Do yourself a favor and be conservative about your private social media accounts. In other words, show integrity – you attract what you put into the world.

MAGIC INGREDIENT TO BEING AN EFFECTIVE ATTORNEY—DELEGATION

As solo or small firm attorneys, we are constantly bombarded with deadlines, client requests, calls, looming trials, and client acquisition. This often

times means not having breaks and being present 24/7. Of course, it is not humanly possible to cover every moving part on our own. In fact, it would be irresponsible to do so. Handling every aspect of a law practice is overwhelming and puts us at risk of making inevitable and devastating mistakes. That is where the art of delegation comes in. There is nothing worse than having a client call constantly because they have not received an update on their case and are frustrated. On top of that, there is nothing more irking than a looming discovery production deadline without having gathered all of the necessary items. Additionally, we are faced with the worry of obtaining additional clients so we can cover our expenses so as to make a living. These are all real duties, worries, and items that keep us up at night. If you are running a successful practice, it is imperative to be part of a team that will support you, your practice, and your clientele. By delegating and retaining the right legal professionals to aid you in your practice, you will not only be more efficient, but organized and helpful.

Tips for Solo Attorneys: If you are a solo practitioner on a tight budget but in need of support staff, hire freelance paralegals and contract attorneys. If you truly need full time support, consider allowing your support staff to work from home or remotely. Studies have repeatedly shown that working from home promotes efficiency, more “deep work,” and effort. There is nothing more rewarding than avoiding a commute and working at your home in your sweatpants. If you allow your support staff to work from home, you can discuss salary options that save you money while at the same time are fair and reasonable in light of the luxury of being able to work remotely. Having even a part-time staff member to help free up your time can not only raise your passion level as discussed above, but also give you more time to connect with clients and fight the good fight!

Always remember that being an attorney is a gift, and being a solo or small firm gives you the freedom to use that gift to the best of your abilities. Continue to build on your blessings with passion, integrity, and delegation.

Legal Persuasion in Distinction & Differentiation

By Jeremy M. Evans



Jeremy M. Evans is the Founder & Managing Attorney at California Sports Lawyer®, representing entertainment, media, and sports clientele. Evans is an award-winning attorney and industry leader based in Los Angeles. He currently serves as Vice President of the California Lawyers Association. He can be reached at Jeremy@CSLlegal.com. www.CSLlegal.com.

When starting – or even sustaining - a law practice, the first question inevitably will be, how do you attract and retain clientele? It is an honest and important question. The simplest answer is that an attorney wanting to attract, retain, and keep clients must practice with distinction and differentiation. With a plethora of large firms in established metro areas in California, there are no shortage of marble-incrusted firms with large conference rooms overlooking a beautiful cityscape. How does a young, small law office pull clients in and away from BigLaw?

Practicing with distinction and differentiation requires the traditional notion of being an honorable attorney with a good reputation. Reputation (consisting mainly of how fellow attorneys, referral partners, the community, family, and friends feel about the attorney) has a direct correlation to receiving clientele and is therefore important. People almost exclusively refer prospective clients to attorneys they know, trust, and can rely on to handle a matter. Being able to complete the task at hand, learning how to refer cases in areas outside your expertise, or ask for help in complex or unfamiliar matters are all important qualities for a successful attorney to have.

Follow the steps outlined below to create distinction and differentiation in your practice while building your reputation and your revenue. But keep in mind the following truism a fellow attorney once told me: “There are attorneys in this business that are very successful, but have no ethics. There are also attorneys in this business that are not very successful,

but have a high moral standard and great ethics. You want to have both success and ethics.” This is an important point because there are always opportunities to gain the world, but forfeit your soul (or license to practice law for that matter), but the point is that it is foundational to be liked, and respected, which allows for distinction and differentiation, success and ethics.

1. FIND A NICHE

Geography is important in terms of knowing the market for your ideal client, and also knowing how you should market your practice. In smaller towns, being a general practitioner is more common and somewhat expected as options are limited in terms of available licensed attorneys. For better or worse, more attorneys flock to the cities and that creates competition. Therefore, being a specialist or expert in a certain field is wise to attract your ideal niche client and you can be focused on your expertise.

Expertise in a subject matter is also a great way to distinguish yourself from the larger law firm competition. This expertise can also help land outside counsel roles to large and small companies. From an internet search standpoint, having a specific skill set and practice area is also likely to result in better search results more quickly and consistently. What do you have specific knowledge about that your competition may not? The science behind DUI's? Were you a former prosecutor turned defense attorney? Injury attorney who dealt with a catastrophic injury in your family? All of these

specific topics can lead to specialization and focus to help differentiate you from your competition.

2. PRODUCE & DISTRIBUTE CONTENT¹

Larger law firms tend to be bogged down with handling large litigation cases and clients to help pay for expansive office spaces, salaries, and overhead. In turn, marketing companies are hired to help promote attorneys and the firm as whole. Essentially, large law firms have the benefit of big clients, but the downside of being too busy to do any marketing or business development. Sole practitioners and small firms can and should be much more personable and maneuverable in the marketing space. In fact, they have to.

Producing and distributing content means doing the things that attorneys went to law school for, e.g., learning how to communicate better. Communication is accomplished through writing, speaking, social media, podcasting, television, radio, and blogs, etc. By the time you read this article, there may be another medium invented to communicate, to which attorneys may be able to use to attract clientele. The point here is that solo and small firm attorneys must focus on business development because the marketing department is small, generally one person, who is also the managing attorney, CEO, CFO, CIO, and COO. As Jonathan Perelman said, “Content is king, but distribution is queen and she wears the pants.” Utilize the skill sets you have to create the content, then distribute it so people can consume it. By doing so, you will create a distinct practice that is distinguishable from others firms, be they small, medium, or large.

3. JOIN ORGANIZATIONS²

Joining organizations, legal or otherwise, lets you meet new attorneys, prospective clients, and friends. Organizations can also provide structure, insight, and information on building a law practice (a business) and can be a great source for referrals. Organizations are also a wonderful place to cure the loneliness that can come with practicing solo or in a small firm. Solo and small firm attorneys often create their own schedules, so making time to network is easier.

The important point here, however, is not just joining organizations, it is to become involved and engaged in those organizations. It is taking on responsibility and leadership. Joining an organization, but not give anything of yourself would be a waste of dues money. In other words, you have to give in order to receive.

Your legal persuasion is through distinction and differentiation. With marketable persuasion, the practice will grow. Being agile in the legal space, especially where technology changes situations and information daily, is a distinct advantage for solo and small firm practitioners.

I have followed the three-pronged approach of geography, branding, and community. Meaning, living and working in Los Angeles, the epicenter of the entertainment and sports industries, while consistently using social media, writing, and podcasting for education, learning, and branding, and finally joining and taking on serious responsibilities with national, state-wide, and local organizations. Following that model will inevitably bring success.

ENDNOTES

- 1 Jeremy M. Evans, *Success in This (or Any) Business*, CAL. SPORTS LAW. (Oct. 27, 2019), <https://www.cslegal.com/success-in-this-or-any-business/>.
- 2 Jeremy M. Evans, *Joining to Grow*, CAL. YOUNG LAW. ASS’N MONTHLY NEWSLETTER (Oct. 2019), <https://calawyrs.org/california-young-lawyers-association/joining-to-grow/>.

The Legal Ramifications of Interpreting and Translating

By Barry Schreiber, Esq.



Barry Schreiber is the California based partner of the Israel law firm, <https://www.ogblaw.co.il/home>. Barry is also the Marketing and Networking Director for Allied interpreting and translating services. www.alliedinterpreting.com Barry has practiced law for over 49 years, licensed in Florida-1971, Israel-1997.

In this article, we'll bring to light the awareness of an area in the practice of law that we, as lawyers, may have overlooked or taken for granted. Upon reading this article, you will obtain a greater understanding of those who speak languages other than English and how culture expresses in language, the uniqueness of the speaker and their knowledge of the world, as it relates to the practice of law. The information can be used in various ways: from the office to meetings and sharing life with others, whose mother tongue is not English.

Imagine yourself waking up one day, stepping out of your home, eager to start the day. You walk to the corner café to grab your morning cup of Joe, and not one word you say is understood. Flustered, you try your best to order, your hands gesturing, even animating an invisible cup to your lips. There in front of you stands the server with an expression of confusion. Then suddenly you realize, you're in another country on a business trip and you're ordering in your mother tongue. You shake your head embarrassed at your mistake, wishing you had an interpreter so that you can have that cup of Joe you so desperately wanted.

We take language for granted, only noticing when we travel abroad as to how paramount it is to our survival. It is how we communicate, connect, adapt, and, most importantly, how we evolve. We live in a diverse, multicultural world where the above example is someone's everyday life.

Let's start by differentiating translations vs. interpretations. Translators typically deal with the written word, while interpreters deal with oral communications. It is important to note that professionals in the field can do translations, as well as interpretations. Commonalities of both are conversions of one language to another. Although, those in the profession have very different skill sets. In the practice of law, you can think of translators as transactional, the written word, and interpreters as transactional and litigation, the spoken word.

Translators pay attention to detail and have extensive knowledge of the use of words in the subject language. They provide precise translation to the language translated, understanding the nuances of both languages. Interpreters, on the other hand, focus on gesturers and specific conversion to targeted words. Interpreters are knowledgeable in colloquialism, dialects, body language, and tone of voice.

These types of professionals vary in proficiency levels. Administrative certified interpreters interpret for workers compensation related work. California court-certified interpreters interpret for workers' compensation and civil cases, and have a broader range of flexibility in interpreting. Federal certified interpreters hold the highest level of certifications. These individuals can interpret for trials in federal court and possess the flexibility to interpret in all cases.

As the world becomes more globalized, the requirement for legal interpretation intensifies.

Besides the language boundaries, the distinctions in legal frameworks make lawful interpretation complex. There are nations where there is a distinct division among common and strict laws. Be that as it may, in different countries, these two laws are not isolated. English is the dominant language in business around the globe, but not all clients speak fluent English. Within the U.S. and around the world, interpreters and translators are of necessity to practice law ethically and efficiently.

The U.S. Population speaks about 350 languages (as of 2015), and the nation has over 60 million bilingual people today. Today there are around 6,500 spoken languages in the world, with about 2,000 of those languages having fewer than 1,000 speakers. The most popular language in the world is Mandarin Chinese, with English coming in to take the next spot. Japanese and Punjabi are on the top ten with French and Indonesian.

In California, we have only 7 Arabic court-certified translators/interpreters, as opposed to the 272,485 Arabic speakers that reside in California. (According to the Arab American Institute Foundation).

Every legitimate interpreter and translator must go through a certification process. The Judicial Council of California tests interpreters and translators for initial certification. There are other certifications as well through private associations, such as the American Translation Association.

As of February 1st, 2017, there is a list of languages that require certification in the State of California, if to be used for evidentiary purposes. The list is as follows: American Sign Language, Arabic, Eastern Armenian, Western Armenian, Cantonese, Farsi, Japanese, Khmer – Cambodian, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, Vietnamese.

The certification process for translators/interpreters:

Interpreters and translators must renew their certification every two years. Interpreters must have 30 credit hours of continued education for certification renewal. The 30 hours must be divided between a 15-hour session with an instructor in person and a 15-hour session online.

Culture is the most important aspect of translating. Legal translations are heavily culture-dependent. Documents from outside of the U.S. will contain the current laws and norms within that culture. This aspect is crucial to the translation process because firms are liable for inaccurate translations of documentation. Dialects, cultural accents, and definitions are critical to the field. For example, the Burmese language is a Sino-Tibetan language spoken in Myanmar. In Burmese, the word marriage “ain htaung” can be understood in English translated as “house of prison.”

Law documents that need translations could range from litigation papers to contracts. In the state of California, Civil Code section 1632 states that when presenting a binding contract with a non-English speaker, the merchant is obligated to provide a translated version of the terms and conditions of the contract before finalization. Often immigration attorneys need to translate their retainer agreements into the mother tongue of the client. Attorneys should utilize interpreters in attorney-client meetings to ensure the first meeting and communication go smoothly, and both parties understand the discussion. It's essential to use interpreters during depositions and testimonies, ensuring the information and the verbiage is accurate and fair.

The presence of certified professional interpreters can ease the anxiety of a deponent with limited English proficiency. Facilitating your law firm's growth and improving revenue means being aware of globalization. Your firm may have to present English documents to a foreign audience. Therefore, it requires regular and immediate access to legal interpreters and translators.

Interpreters typically charge clients for a half-day or, whole day, or by the hour. Usually, translators charge per word in the document translated. Some translators charge by the page. Per word and page costs are dependent upon the language, how quick the translation is needed, and the level of technicality.

Finding and utilizing the right certified translator/interpreter could be the difference in winning or losing your case. Focus on your practice, not on the complexities of interpreting and translating. The last words of Albert Einstein will never be known as they

were spoken in German, and the attending nurse did not understand German! The world is getting smaller. The globe is shrinking. To grow commercially, businesses need to speak the languages of clients and partners located across the earth. Let's bridge the language gap and make your words accessible to all.

REFERENCES

1. CALIFORNIA COURTS, SEARCH FOR AN INTERPRETER, <https://www.courts.ca.gov/35273.htm>.
2. Bernadine Racoma, *What is Legal Translation and What Makes it Different?*, DAY TRANSLATIONS (June 28, 2017), <https://www.daytranslations.com/blog/legal-translation-different/>.
3. Bernadine Racoma, *How Legal Interpreting Services Will Improve Your Law Firm*, DAY TRANSLATIONS (June 26, 2019), <https://www.daytranslations.com/blog/interpreting-improve-law-firm/>.
4. <https://www.daytranslations.com/blog/interpreting-improve-law-firm/>.
5. MULTI-LANGUAGES CORPORATION, CODE OF ETHICS – INTERPRETERS, https://multi-languages.com/interpretations-shtml/interpreters_ethics-shtml/.
6. Nina Ivanichvili, *What Attorneys Need to Know About Legal Translators and Legal Interpreters*, HGEXPERTS.COM, <https://www.hgexperts.com/expert-witness-articles/what-attorneys-need-to-know-about-legal-translators-and-legal-interpreters-37803>.
7. Peter Geraghty, *Ethics Tip - December 2015*, A.B.A. (June 7, 2019), https://www.americanbar.org/groups/professional_responsibility/services/ethicssearch/ethicstipdecember2015/.



The Personal Touch Sets You Apart, Is Your Most Cost-Effective Marketing, and Provides Occasional Hugs

By C. Margaret Tritch Buonocore

When I was opening my firm, I wondered how would I compete? What would make my practice different? I was nervous and concerned. I did the things I knew how to do. I developed my business plan, found office space, developed my branding, website, etc. I ticked all those boxes. But when I focused on the reason I was opening my firm, the pieces fell into place with far less fear. I wanted to be of service to others. I wanted to use my twenty plus years of practicing and working in companies to help people. Your reasons may not be mine, but your reasons will be your North Star. They will guide you to what only you can offer. In the various companies I have had the privilege to work for, it has been important to attain clarity on the reason I was doing what I was doing and then really focus on how I could do it uniquely, better and/or differently. What is your “why”? And how can you deliver it better? Knowing this for myself helps me through the bad days and keeps me focused on my why.

I have worked with some of the biggest law firms in my career – as a client. I was an in-house counsel and while I have a few lasting friendships from those days, we were all in the rat race. I was treated well because I had large contracts to offer to these firms.



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Speed, reputation, resources, and deep pockets were important in my selection of those firms. But I can't say that any of those partners truly cared about me or the companies.

“Being of service” to me goes hand in hand with showing people that you care about them. I knew it would be foolish to try to compete with large firms, as those things that I looked for when I was hiring larger firms were simply not things I could offer. I still had my experience and skill set, but I needed to deliver it differently once I opened my own firm. I also needed to deliver it to a different client base. I identified that my clients would be individuals with assets and entrepreneurs of smaller companies. I could offer a caring service that would feel different than a medium-sized or larger firm. I could offer my experience but deliver it to people in a personal way.

Attorney offices are often cold and impersonal. I wanted my law firm to feel welcoming and put people at ease. I have nice beverages to offer them as well as fresh treats set up in advance in the meeting room. The receptionist greets each guest/client warmly. Pens and notepads, branded with our law firm, are waiting for them when they sit down in the meeting room so that they can take notes. A branded client folder is given to them containing a marketing piece on our firm, a copy of our most recent newsletter,

my business card, and the client questionnaire (if they haven't already filled it out). We may also be able to include the Fee Agreement. After the initial client meeting, a handwritten thank you note is sent to them in the mail. This is also branded, and my business card is inside for them again. The Fee Agreement, if not already provided, is sent to them within a day.

The personal touch continues. Every new client is set up in our calendar so that we send them a birthday card. Paperless Post offers nice electronic cards that you can create a template for and then just change it each year. These cost a little money, but they look appealing. Several clients have thanked us for remembering and shared how they appreciate us being so thoughtful. At the end of each year, when it gets quieter, I phone a selection of clients I haven't spoken to in a while and just wish them a Happy Holidays and check in with them. We send out holiday gifts and/or cards.

I believe it is important to build trust with clients as well. To me, this means doing what we say we are going to do and when we say we will do it. If we cannot perform as promised, which occasionally happens, then we let our client know and provide a revised delivery date. Big firms aren't always great communicators, and the reason I have heard several times, is linked to the fact that multiple people are touching the file. Failure to communicate is always at the top of the list for bar complaints, which can often derail client relationships and referrals in the future. Being a good communicator sets you apart, shows respect, and demonstrates that you are worth your client's trust.

You might say, "How do I have time for this?". Or, you question the value of doing such things. If you provide a good service, then your best referral source is your current and former clients. This means that you must stay present in their minds. How do you tastefully do that? I would suggest having multiple personal touches with them throughout the year that not only makes them think of you, but think of you favorably. The bonus is you feel good doing it and create pleasant interactions in your day.

The solo and small firm lawyer also needs to build a network of referrals. From what I have been able to ascertain from different partners of law firms, except for criminal and personal injury attorneys, the client who finds you through the Internet is your C and D client. Personal referrals are disproportionately your A and B clients. It's important to figure out the organizations in your practice area that make sense to join and be purposeful about meeting at least two new people at each event. Invite people for coffee or lunch that could be a referral source for you and don't be afraid to pay. Financial Advisers are a major source of my referrals. When they send me a referral, whether it works out or not, I also send them a handwritten branded thank you note and a small gift. Currently, we are sending two movie passes to a major theater chain. This equates to about fifteen dollars. You would pay more than that to Google Adwords. Our referral sources also receive our newsletter and a holiday card. From our calculations, we are far ahead on our marketing budget than I would be in paying one of the referrals sites or search engines, and I have more tangible results to show for it.

In the four years that I have had my practice, I have experimented with how to keep a presence of mind with my clients and referral sources. You will no doubt have things you can do that are different, but the personal touches are what can set you apart to obtain the client and to receive referrals for years to come. It requires some effort, but it connects you with people in a meaningful way. Every time I receive a hug, gift or thank you card from one of my clients, it reminds me of why I do what I do. We provide legal services, which means we serve people. Most of our clients will never know how brilliant we are or how well we write. What they will know is that we delivered the services we said we would, and did we do it in a way that they felt respected or even cared for, making them want to come back to us again. And, if we are lucky, we get a big hug when they greet us in the future, or they have become a new friend thus making the practice of law a noble profession again.

The Role of “You” in Your Law Practice

By Freyja Wolken



Freyja Wolken is an injury and disability attorney with Bonnici Law Group, where she has worked since 2014. Freyja handles all types of personal injury cases, long-term disability appeals, and Social Security disability appeals. In her free time,

Freyja enjoys traveling, reading, and spending time with her husband and their three cats. To learn more about Freyja, go to: www.bonniciawgroup.com.

Differentiate yourself! Stand out from your competition! Find a niche practice area! That’s what we all hear as unsolicited advice while starting up a law practice. Easier said than done, right? What is the answer then? What steps should you take as you embark on this big adventure?

The simple answer is, do what you love and everything else will follow. When I joined my current office in 2014, I was the only assistant to the founding attorney, still in law school and in search of my place. I was always intrigued with personal injury, and after my own unfortunate car accidents, I knew that personal injury was my calling. I not only knew what our clients were going through on a deeper level, but I found it rewarding to be their voice and advocate throughout the process.

Once I became an attorney, I was even more invested in understanding what it took to make sure our clients received the care and attention they deserved. With that came the ultimate question of “how do we differentiate ourselves from the competition?”

Our small practice is in the heart of San Diego, which is definitely not lacking in attorneys. There are big firms, small firms, boutique firms, solo practitioners, and many more. So, how do you rise above the competition and set yourself apart?

LESS IS MORE

We have all heard the saying “jack of all trades, master of none.” This is especially true for law firms. Attorneys have the mentality that more areas of practice will lead to more clients, but while this could be true, there will not be enough time to focus and excel in all practice areas, and it could be viewed as not mastering one particular area by referral sources and clients alike.

However, it can be beneficial to have a secondary practice area that complements your primary practice, creating a niche in the market and making you the master of that area.

Our office is now a team of five, and personal injury has always been our main focus. However, we have incorporated ERISA long-term disability cases into our practice. There is a similar foundation to the cases and allows us to continue to help those who are injured and disabled. While it is good to have a niche practice area, there are some challenges that come along with it.

Not everyone will know how to refer to your niche practice area. It will be your responsibility to educate others, including your competition, about how to refer these types of cases to you and the facts to look out for. Do not wait for others to ask you about it. Consider networking with your competition and even giving their office a “cheat sheet” of boxes to check on whether a client is a potential referral. Make referring you a case as fool-proof for their office as you can. Connect with your peers over your shared practice area, all the while educating your peers over your niche practice area. This is a good way to differentiate yourself within your peers and continue to grow your practice with the help of those peers. While ERISA long-term disability cases are more rare than personal injury cases, there are only a handful of attorneys competing for those cases in our local area, raising our chances of being the first firm contacted for a potential claim, and being the top-of-mind attorney to others in the legal field when they need to refer a case out.

The fact that you are practicing an area of law that not many others do will not guarantee immediate referrals and cases. There is still the role of “You.” If you are

passionate, dedicated, and excited to speak with others about your niched practice area, then others will remember this passion and will seek you out next time they have questions or a possible referral.

NARROW YOUR FOCUS

While a niche practice area can be helpful to your firm, it is not absolutely necessary in order to differentiate yourself from your peers. If you practice personal injury, for instance, consider marketing to just one aspect of personal injury. Our managing attorney has had a lifelong passion for cycling and has been able to incorporate that into our practice by marketing to other cyclists. However, it is more than just marketing. Our office is out cycling, sponsoring cycling events, being active in the cycling community, and becoming a go-to resource for “all things bike” because that is our passion. These actions set ourselves apart from other personal injury firms who also handle bicycle accident cases. We show that we are relatable and truly understand the cycling way of life.

When cyclists are involved in accidents, they know that we “speak bike,” and because of that established relationship, they trust us to help them get back in the saddle. Speaking bike not only helps with clients, but also with the insurance companies. We are able to accurately portray just how much an accident impacts our client’s daily life and we know what is needed to make sure our client’s high-end bicycles are valued adequately. (For example, a claim involving an S-Works Venge with eTap and ENVE wheels would be treated differently than a bike purchased at WalMart).

It is important to remember that, whatever the passion is, do not be afraid to try and incorporate it into your law firm. This will help separate you from your peers and help differentiate yourself from the competition as your passion for that niche, as well as for the law, will shine through and hopefully be brighter than your competition’s billboard. You will become the focus of your firm, and when others can see your passion and are able to relate to you as a person, everything else will fall into place.

BE INVOLVED WITH YOUR CLIENTS

In a chaotic world, it can be hard to slow down and follow up with clients on a consistent basis. It is easy to

make a list for your assistant and have them handle the client follow-ups. While it is not always necessary for the attorney to reach out, it is important to communicate and establish a rapport with your clients. You do not want to hop on the phone right at the end of a case, present the settlement options, and call it a day. Clients want to feel like they are being taken care of, they want to know where their case stands, and these types of communication continue to build trust between you and your client. When it comes time for the important conversations with your clients, the trust will make those conversations easier.

There are many ways an attorney can continue to build trust and respect with clients. In this case, do what “you” would want from a firm: make it personal. Many firms will provide clients with a mug upon sign up, send clients a birthday card, or have snacks in the waiting room for them. Yet throughout the client’s case, the client might never have the attorney’s direct contact information. Your goal should always be to go one step further. Follow up an office birthday card with a personalized email to your client. Do not be afraid to get to know your clients. Make note of their children’s names, their upcoming vacations, or congratulate them on a new job. Clients like to know you are invested and actually care about them. I remember one of my first clients was so excited that I remembered her birthday, that she took the birthday card to work to show her coworkers!

An attorney can go through the motions of doing all of the right things, but what takes your law firm to the next level and what differentiates you from the other firm down the street, is you. Plain and simple. Any client can find an attorney to handle their case, but not every client can find an attorney that will go the extra mile for them. Ultimately, going above what is expected of you, and excelling at it, will differentiate you from the pack. There is no magic formula. Just hard work, perseverance, compassion, and trust.

So remember: less is more, narrow your focus, and become more involved with your clients. But above all else, just be you! Being yourself is what made you hang your own shingle or work in a small office, and will ultimately differentiate you from the competition.

MCLE Article: What to Do If an Attorney Becomes Incapacitated or Dies?

By Evie Jeang and Ritzel Starleigh Ngo

(Check the end of this Article for information about how to access 1.0 self-study credits.)

As a sole practitioner or an attorney working in a small firm, we rarely plan for the inevitable; death, and/or incapacitation. It is important that the attorneys takes steps to ensure that their client is protected if the attorney should become incapacitated, disabled, disappear, disbarred, and/or dies. Lawyers have a fiduciary duty protect their clients, to create a plan and to prepare for a personal disaster in the event that they become incapacitated or die. If lawyers who do not have a succession plan in the event of death or incapacity, that leaves their clients matters and their small firm in jeopardy.

HOW DOES CALIFORNIA DEFINE INCAPACITY?

Under the California Probate Code section 810-13, California defines incapacity as an inability to make decisions or perform certain acts when at least one of the mental functions are impaired or, lacking such as inability to understand or communicate with others, problems recognizing familiar people and objects, failure to reason logically, presence of delusions and/or hallucinations among other things. In California, incapacity is initially determined by a treating physician.



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family law, including but not limited to dissolution of marriage, child custody, child support, spousal support, child visitation, domestic violence and the new trendy assisted technology reproduction law (ART).



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WHO IS RESPONSIBLE?

In the event that a lawyer dies or becomes incapacitated, typically the executor of the lawyer's estate, or the conservator or guardian of the lawyer will handle the attorney's matters. Further, an affected attorney may have agreements prior to incapacity or death with another attorney or firm to handle all open client's matters with the consent of the affected attorney's clients.

CLOSING A LAW PRACTICE

A law practice may have to be closed permanently, temporarily, completely, or partially when a lawyer dies or is physically or mentally unable to practice law. There are ethical considerations when closing a law practice such as communication to and from clients, as well as communication such to opposing

counsel. Staff must be retained or terminated, occupancy of the office premises, record and file dispositions, and tax returns. It is important that prior to closing a law practice as a result of incapacity or death that the client's confidentiality, information, and case files are either returned to the client or referred out to a competent attorney pursuant to the California Rules of Professional Conduct rule 1.1.

PLANNING – SUCCESSION PLAN

Typically, family law firms are comprised of small firms or sole practitioners. As a sole practitioner or as an attorney working in a small law firm, (not limited to family law), attorneys must consider the importance of succession planning. Succession planning is essential to every lawyer's practice in order to protect their clients in the event of the attorney's disability or death. Effective succession plans include, but is not limited to, written instructions of how and where client information is stored, information concerning disposition of closed client files, regarding payment of current liabilities, instructions to gain access to computer passwords, and information detailing how the successor will be compensated.

Most importantly, a succession plan should protect the client's interests and attorney client privilege. Succession planning should cover the ways in which an attorney should promptly return the client's file, appoint a successor to take responsibility and conclude the practice, information to the client on replacement counsel and, where the client's matter will be moved to so long as the client provides consent and there is no conflict of interest pursuant to the California Business Code section 6180 or section 6190 (incapacity).

SOLE PRACTITIONERS AND SMALL FIRMS

Under the California Rules of Professional Conduct, rule 1.3, comment 5 specifically addresses a client's matter in the event of a sole practitioner's death. It is important that the sole practitioner complies with the requirements under rule 1.1 and rule 1.3 to ensure that each sole practitioner prepares a plan much like a succession plan by "designating a competent lawyer to review client files, notify each client of the lawyers' death and determine whether

there is a need for protective action." Specifically, in family law matters it is important that the affected attorney appoint an executor or administrator to be responsible to give notice to the clients in the event of the attorney's incapacity or death. Specifically, the sole practitioner should appoint an assisting or transitionary attorney to access funds held in the affected attorney's trust accounts.

When a sole practitioner does not appoint an assisting or transitioning attorney, oftentimes clients will not be able to access their funds and will have to go through the process of filing motions with the court in order to direct the bank to release IOLTA funds and client trust accounts. When there is no back up attorney authorized to approve an IOLTA disbursement in the event of death or incapacity, a relative, spouse or the deceased attorney's estate must go through the process of getting motions filed in order to direct the bank to release the IOLTA funds. This is oftentimes a lengthy and burdensome process, which can frustrate the clients as well as the affected attorney's family members.

TRANSITIONING ATTORNEY ROLE

In family law matters, cases are often time sensitive in their filing dates and emotional sensitive due to the nature of divorce, child custody, and domestic violence matters that are posed in small family law firms and to family law sole practitioners. It is important that an attorney in a small firm or that a sole practitioner consider the delicacy of the client's matters prior to their incapacity or death to ensure that the process is seamless to ensure that the clients have alternative transitioning attorneys that they can trust to handle time sensitive matters, hearings, and other various requests.

However, an attorney who appoints a transitionary attorney, both the affected and transitionary attorney must consider ethical obligations towards their responsibilities such as winding down the affected attorney's office, representing clients that may be a conflict of interest, and maintaining the relevant bank accounts. It is important that as a transitionary attorney you ensure that prior to taking a client from an affected attorney's office that you are complying with the Rules of Professional Conduct and Business and Professions Code.

It is important to avoid your family members from being posed with questions from clients who are demanding their filings or money to be returned to proceed with their case or appoint new counsel. Ensuring that your practice or firm has adequately planned for the future will prevent family members from malpractice liability and client suits.

At the Ideal Legal Group Inc. firm, we firmly believe in planning and preparing ahead. Though California does not require mandatory succession planning, we know how important and time sensitive our cases are to our clients. On a daily basis, we deal with clients who are in the process of getting divorced, fighting custody battles, and domestic violence matters. The last thing we want are for clients to feel that in the event that we are unable to represent them, that they are not left in good hands. Thus, our firm discusses our succession planning in the event of incapacity or death with our clients, to ensure that our clients are left at ease with the prospect of another transitioning attorney or referral attorney handling their matters.

In conclusion, it is important to plan as an attorney in a small firm or as a sole practitioner. It is our fiduciary duty as attorneys whether in small practices or as sole practitioners to prepare a succession plan in the event of an attorney's death or incapacity. Remember to write down passwords to your computer and phones, appoint a successor, discuss whether the successor candidate will feel comfortable taking over the case, what replacement counsel will the client's matters be moved to, and the location of an office manual that details and explains the list of client names, addresses, open files, deadlines, billing records, and upcoming hearings and cases.

SOURCES:

1. Gayle Eskridge, *Death of a Sole Practitioner: Planning for the Event and Administering the Aftermath*, ESKRIDGELAW.NET (Aug. 6, 2019), <https://www.eskridgelaw.net/death-of-a-sole-practitioner-planning-for-the-event-and-administering-the-aftermath/>.
2. THE STATE BAR OF CALIFORNIA, GUIDELINES FOR CLOSING OR SELLING A LAW PRACTICE, <http://www.calbar.ca.gov/Portals/0/documents/publications/Closing-A-Law-Practice.pdf>
3. *Succession Planning*, A.B.A (July 24, 2019), https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/.
4. *Rule 1.17: Sale of Law Practice*, A.B.A (Aug. 16, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_17_sale_of_law_practice/.
5. *Rule 28*, A.B.A (June 28, 2017), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_28/.
6. MODEL RULES OF PROF'L CONDUCT r. 1.3 (A.B.A, cmt.)
7. https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/comment_on_rule_1_3/.

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In the Wake of Dynamex, AB5 Cleared the Path for Freelance Lawyers

By Kristin Tyler



Kristin Tyler is Co-Founder of LAWCLERK (www.lawclerk.legal), where attorneys go to hire freelance lawyers. She is also a trusts and estates lawyer, busy mom and firm believer that the practice of law can be rewarding despite its daily demands.

The gig economy is changing the way millions of people are living and working. Companies such as UberEATS, Airbnb, Fiverr, Lyft, and countless others have become an integral part of our daily lives and how we receive services like travel, housing, and, food, but also, how we manage our legal practice.

The legal community has been embracing the gig economy for decades before the phrase “gig economy” was coined and became so prevalent. Busy attorneys have turned to so-called “contract attorneys” for many years to get briefs written, documents reviewed, and issues fully researched. The more modern term for these “contract attorneys” is “freelance lawyers” but whatever you want to call them their role is clear: to provide needed support to busy attorneys to get legal work completed in an efficient manner without costly overhead of an associate on payroll. However, in light of *Dynamex Operations W v. Superior Court*¹ many California attorneys have reevaluated whether they can hire these freelance lawyers without legal consequence.

Dynamex is a California case from 2018 having a considerable impact on the gig economy and freelance workers across many industries. The ruling seemingly established a new framework to classify workers as employees or independent contractors.² The decision created worry across the freelance industry, including for California-based lawyers, who understandably queried whether hiring freelance lawyers was compliant with California labor laws.

Some attorneys have interpreted the *Dynamex* holding to mean that they can no longer hire freelance lawyers to assist in drafting and preparing legal work. This is a misinterpretation of the *Dynamex* ruling. Further, A.B. 5 swiftly wiped out any reason for busy California attorneys to give pause about hiring freelance lawyers.³ Let’s examine.

WHAT IS DYNAMEX?

The *Dynamex* case involved two workers suing on behalf of a class and challenging their classification as independent contractors. These individuals worked as same-day couriers for Dynamex – a nationwide same-day courier and delivery service.⁴ The lawsuit hinged upon the fact that prior to 2004, Dynamex treated its couriers as employees. After 2004, they were reclassified as independent contractors, yet still performed the same functions as when they were employees. Pretty much the only thing that had changed was a significant decline in compensation and benefits.⁵

It was up to the court to decide whether the workers should be classified as employees or independent contractors for purposes of California wage orders.⁶

What are wage orders? Wage orders impose obligations relating to the minimum wages, maximum hours, and a limited number of very basic working conditions for California employees.

In *Dynamex*, the court held that the workers were misclassified as independent contractors and they

should be classified as employees and thus subject to the California wage order laws. Further, the *Dynamex* court established a new ABC test (“Test”) to determine if a worker is an employee or an independent contractor.⁷ The Test presumes that all workers are employees.

DYNAMEX FEARS

The fear among those in industries dependent upon – or thriving because of – freelancers was that *Dynamex* would replace the common law employment test set forth in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*.⁸ In the subsequent cases since *Dynamex*, this fear has not come to fruition.

As summed up by the Ninth Circuit in *California Trucking Association v. Su*: “*Dynamex* did not purport to replace the *Borello* standard in every instance where a worker must be classified as either an independent contractor or an employee for purposes of enforcing California’s labor protections.”⁹

The intermediate appellate courts in California have all agreed with this position. So, when it comes to labor code violations¹⁰, joint employment cases¹¹, the Domestic Workers Bill of Rights¹², and claims outside of wage orders¹³, the common law standard of *Borello* still predominates.

Universally, state and federal courts have held that *Dynamex* is extraordinarily limited in scope and it did not purport to replace the *Borello* standard in every instance where a worker must be classified as either an independent contractor or an employee for purposes of enforcing California’s labor protections.

ENTER A.B. 5

Assembly Bill 5 is groundbreaking legislation which will alter the ability of many companies to claim workers as independent contractors. Assembly Bill 5 codified the Test set forth in *Dynamex* and created a presumption that workers should be classified as employees.¹⁴ Classifying workers as employees triggers a number of benefits for those workers including overtime pay, paid sick leave, worker’s comp benefits, and unemployment insurance. From the employers’ standpoint these benefits are

incredibly expensive but to the worker they are invaluable.

The intent of A.B. 5 is to limit the ability of companies to classify workers as independent contractors rather than employees in the state of California.¹⁵ The big distinction in the classification is the fact that employees get greater labor protections, such as minimum wage laws, sick leave, and unemployment and workers’ compensation benefits while independent contractors do not. Of course, these protections come at an expense for employers. The underlying force behind the introduction of A.B. 5 were growing concerns about employee misclassification, especially in the gig economy.

A.B. 5 EXEMPTS LAWYERS

Now to the important part as it pertains to busy attorneys and the use of freelance lawyers.

Assembly Bill 5 carved out a specific exemption for an individual who holds an active license from the State of California and is practicing in a one of several recognized professions including lawyers.¹⁶ Other recognized professions which were exempted include architects, engineers, private investigators, and accountants.¹⁷

What does this mean for busy attorneys hiring freelance lawyers? If you had any concerns about *Dynamex* before those should be alleviated with the passage of A.B. 5 and the clear exemption for freelance lawyers.

BENEFITS OF FREELANCE LAWYERS

Outsourcing legal services offer many benefits to busy solo attorneys and firms of all sizes. These include:

Make more money. Outsourcing can improve your bottom line by leveraging the time, talent, and expertise of freelance lawyers. Currently, there is an overabundance of graduating lawyers and the big law “up or out” system is creating thousands of talented and available lawyers with specialized knowledge. You can take advantage of this and get skilled attorneys at reasonable rates on a freelance basis.

Expand your practice area expertise. With outsourcing, you can meet your clients' needs by selecting skilled freelance lawyers who have subject matter legal expertise in other areas of the law.

Achieve flexible staffing for your cases. By using freelance attorneys, you can get help when you need it. You can find qualified legal help at any skill level for any project. You can get assistance with preparing memos, agreements, pleadings, written discovery, and other types of work. And unlike the traditional full-time associate, you don't have to pay the freelancer when you are not busy and do not need their help. You can staff up when required, and work lean when your cases are docile.

Move away from the billable hour toward flat fee billing. Outsourcing allows you to engage talented lawyers in a para-professional capacity on a flat fee basis to assist you with discrete projects. As a result, you can charge your clients a set fee for legal work instead of hourly billing, which is more frequently being demanded by clients and gives you a marketing advantage.

Lower the cost of legal services and be more competitive in the market. Outsourcing is often more economical than hiring attorneys because of the overhead costs employees add to your business. Those savings can be passed along to your clients, which gives you a competitive advantage.

Find work/life balance. Solos and small firms are under more pressure than ever to work constantly in order to make a profit. By using freelance lawyers, you can bring in extra help when you need it without the overhead of a full-time associate, thereby giving you more time with your friends, family, and hobbies.

Despite the fears generated by *Dynamex*, California attorneys can continue to see the aforementioned benefits – and more – from working with freelance lawyers thanks to the clear exemption set for lawyers by the passage of A.B. 5.

ENDNOTES

- 1 *Dynamex Operations W v. Super. Ct.*, 4 Cal. 5th 903 (2018).
- 2 *Id.*
- 3 A.B. 5, 2019-2020 Reg. Sess. (Cal. 2019), 2019 Cal. Stat. Ch. 296.
- 4 *Dynamex*, 4 Cal. 5th at 917.
- 5 *Id.* at 919.
- 6 *Id.* at 942.
- 7 *Id.* at 916.
- 8 *S. G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 48 Cal. 3d 341, 351 (1989).
- 9 *Cal. Trucking Ass'n v. Su*, 903 F.3d 953, 959 n. 4 (9th Cir. 2018).
- 10 *Salgado v. Daily Breeze*, B269302, 2018 WL 2714766 (Cal. App. June 6, 2018) (Not Reported in Cal.Rptr.3d) ("Because the Labor Code does not expressly define 'employee' for purposes of section 2802, the common law test of employment applies." (quoting *Estrada v. FedEx Ground Package System, Inc.*, 154 Cal. App. 4th 1, 10 (Cal. 2007))); *Jay Rossett v. Hunter Engineering Eng'g Co.*, A148819, 2018 WL 4659498 (Cal. App. Sept. 27, 2018).
- 11 *Curry v. Equilon Enter., LLC*, 23 Cal. App. 5th 289 (2018).
- 12 *Duffey v. Tender Heart Home Care Agency, LLC*, A152535, 2019 WL 168654 (Cal. App. Jan 11, 2019).
- 13 *Johnson v. Serenity Transp., Inc.*, Case No. 15-cv-02004-JSC, 2018 WL 3646540 (N.D. Cal. Aug. 1, 2018).
- 14 A.B. 5, 2019-2020 Reg. Sess. (Cal. 2019), 2019 Cal. Stat. Ch. 296.
- 15 *Id.* at § 1
- 16 *Id.* at § 2.
- 17 *Id.*



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CLA IS MORE THAN JUST THE SOLO & SMALL FIRMS SECTION

If you're a member of the Solo & Small Firms Section, you're a member of the California Lawyers Association (CLA) and if you're not a member yet, we hope you'll join us! Didn't know you were a member? Don't know what that means? Keep reading.

What is CLA?

The California Lawyers Association is the statewide, voluntary bar association for *all* California lawyers. CLA is a 501(c)(6) professional association that launched in January of 2018. CLA offers unparalleled continuing legal education, the chance to develop an incredible statewide network of relationships, advocacy on matters critically important to the profession, and opportunities for statewide professional visibility and leadership. Our mission is to promote excellence, diversity and inclusion in the legal profession and fairness in access to justice and the rule of law.

How did CLA originate?

In 2017 the California Legislature decided it was important for the State Bar of California to focus on its regulatory duties—licensure, admissions and discipline. It enacted S.B. 36, which provided for the creation of the California Lawyers Association with the 16 substantive efforts law Sections and CYLA as its inaugural members. CLA also took on those roles that are traditionally associated with professional associations.

Beyond my Section, what does CLA do?

We do what statewide bar associations typically do, including advocating on behalf of our members and the profession, giving awards to stellar members of the profession, serving as a communications hub among various stakeholders in the state and representing the state's attorneys on the national and international stage. CLA does all of these things and more! You can learn more at calawyers.org/member-benefits/

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CLA has a variety of organization-wide committees, many of whom are often looking for members. In particular, our Programs Committee, our Awards Committee, our Membership Committee and our Diversity Advisory Council are great opportunities to get more engaged across the organization. Go to our website, CALawyers.org to learn more!

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