



CITATIONS

J U N E - T W O T H O U S A N D T W E N T Y O N E



RETURNING TO THE OFFICE: WHAT EVERY LAW FIRM NEEDS TO KNOW

by Laura Withrow

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PRESIDENT'S MESSAGE

by Marc D. Anderson



In 2012 fortune was smiling on me. I had a good, fulfilling job with **Mark Hiepler**. I was working with him, **Gina Clemow** and **Maria McCarthy**, all great lawyers, on cases and causes I believed in. At home, my son, Bodie, was in kindergarten and my daredevil daughter, Libby, four at the time, was keeping Kristi and me on our toes! I was comfortable and content.

Then life took a sudden turn. In May, my mom called to tell me dad was in the hospital. I could hear the worry in her voice. I hadn't seen this coming. Less than a month earlier dad had replaced a water heater and was working on sailboat projects.

I was on a plane the next day. Dad was in good spirits but had been diagnosed with pulmonary fibrosis. He was on oxygen. We spoke with a specialist who gave us hope for a cure – possibly even a lung transplant. I remember standing on the top level of the hospital's parking structure one humid evening just after sunset trying to process everything. The western sky behind the hospital was beautiful. When I left Florida a few days later I was cautiously optimistic, clinging tightly to the hope the doctor had given us.

In early June, I flew back to Florida. Dad was being discharged from a rehabilitation hospital to hospice care at home. I knew what hospice was. There would be no

miracle cure or lung transplant. I walked in the door late Saturday night and gave my mom a big hug. I could feel the worry in her.

On Sunday, people from my parents' church came to the house to visit. We sang some of dad's favorite hymns including *This Is My Father's World*. Dad was on oxygen but was visiting and laughing with us. Every now and then he would tell me a specific detail – where certain documents were, financial information, where a small bronze part was that would be needed to finish a sailboat project. He asked me to go outside and check to see if the air conditioner was dripping from a particular spot. What's going on? I wondered. This isn't necessary.

That night I fell asleep in my parents' guest room believing my father had time left, maybe even months, and that we were just going to have to learn how best to take care of him. I woke up to find his condition had worsened in the night. By mid-morning I called my younger sister, Jina, who was staying with some friends nearby, and told her she had better get to the house.

Throughout the day, people came by to say their goodbyes. Dad's eyes were closed most of the time and he couldn't talk, but he could nod and squeeze our hands to let us know he heard us.

I remember that Monday night clearly. All the visitors had left, dad was resting peacefully in his hospital bed in the dining room, and my mom, sisters and I were sitting at a nearby table talking quietly with the nurses about all the things we had to do to take care of dad. Suddenly, Dad called us with a soft groan. We all rushed to his bedside. We weren't expecting it, but we knew this was the moment. As dad took his last breaths, we all held hands and said we loved him. He died peacefully with his wife, children, son-in-law and three older grandchildren by his side. It was a terribly sad but special moment for each of us. I was so glad I was there.

It's been nine years since my father left us on June 11, 2012. A few summers later my family was on a small ferry taking us to tour a lighthouse in the Apostle Islands on Lake Superior. We were sitting on the top deck and the ferry had just left Bayfield when I saw my father's boat sailing in the channel. I was taken back twenty years to the summer of 1994 and our sailing trip together after I had taken the bar exam. I looked over at Bodie and Libby, felt the rush of time, and was reminded of my own mortality.



Marc D. Anderson is a lawyer with Hiepler & Hiepler, APC, in Oxnard. He represents plaintiffs in personal injury and wrongful death cases.

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HAVE YOU HEARD?



R. Scott Mullen has joined Myers, Widders, Gibson, Jones & Feingold, LLP as an associate after six years in Greenberg Traurig, LLP's Los Angeles litigation group. Mullen focuses

his practice primarily on civil business litigation as well as employment, personal injury, real estate, probate, HOA and construction litigation and is active in the Ventura, Santa Barbara and surrounding communities. Reach Mullen at (805) 644-7188 or smullen@mwiglaw.com.

practiced in Bakersfield and was a past president of the Kern County Bar Association. He spent the last five years practicing in Ventura and was a featured speaker for the Barristers Bridging the Gap event. He will be sorely missed.



Carlos Cabral of Cabral Schoneman LLP, and often a judge pro tem, passed away peacefully on May 15, with his wife and daughter by his side. He was 56 years old. Watch for an obituary in the July issue of CITATIONS.



Judge William Q. Liebmann retired on May 8, after more than 18 years on the Ventura Superior Court bench. During his career, he presided over a wide range

of civil and family law matters. Judge Liebmann was appointed to the Superior Court bench by Governor Gray Davis in 2003. He is a former Supervising Family Law Judge and Supervising East County Courthouse Judge. He was named a Distinguished Judicial Officer in 2015 by the American Academy of Matrimonial Lawyers Southern California Chapter.



Lauren Wood and husband Byron welcomed their first baby, Tristan James Wood, on May 14. Both are very excited for their newest addition to the family.



Sorry to report two big losses to Ventura County's legal community. **Brett Price**, Of Counsel at Norman, Dowler, LLP, passed away suddenly in early May. He previously

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HOW TO REACH A SETTLEMENT OF HISTORIC PROPORTIONS

by Hon. Vincent O'Neill (Ret.)



So you think your case has no chance to settle? There are lessons to be had in our nation's history that shed light on resolving legal disputes. The Constitutional Convention of 1787 is particularly instructive, given the significant compromises that took place there. Several lessons can be learned from that momentous event, and James Madison's role in particular.

Lesson 1: Show Up

In *American Creation*, renowned historian Joseph Ellis notes (p. 107) that the delegates who assembled in late May of 1787 were about evenly divided between moderates, who favored simply reforming the Articles of Confederation, and more "radical" attendees, such as James Madison and his key ally George Washington, who viewed the Articles as "beyond repair." Those opposed to any change boycotted, Ellis notes, resulting in a one-sided slant toward reform.

As all litigators know, a successful mediation depends on all sides participating with minds open to compromise. Those who choose not to participate cannot expect to have their voices heard.

Lesson 2. Prepare Yourself (and your client)

Although James Madison rejected the title of "Father of the Constitution," he earned that distinction according to many historians in a number of ways. He prepared for the Constitutional Convention like the future of his country depended on it.

Initially, having been named a Virginia delegate to the ultimately futile Annapolis convention of 1786, Madison intensively studied relevant materials, including two shipments of books on history and political theory that he had requested and received from Thomas Jefferson, who was serving as an ambassador in Paris. According to historian Ellis, Madison's reading and thinking in the spring and early summer of 1786, rather than a voyage of discovery, was an effort to "marshal evidence" for his "preferred verdict," which was a much-strengthened national government. As Ellis puts it:

Though he had the demeanor and disposition of a scholar, he had the mentality of a lawyer defending a client, which in this case was a fully-empowered

American nation-state. He understood his task as a partisan exercise in which he amplified evidence that supported his case and prepared to rebut evidence from the other side.

This is interesting given that Madison, though Princeton-educated, was not an attorney. In *The Business of May Next*, subtitled "James Madison and the Founding," political historian William Lee Miller notes that, by his mid-thirties, Madison's service in the Virginia Assembly and the Continental Congress (1780-84), along with his systematic, self-directed studies, made him a unique combination of a practical and theoretical politician. In Miller's words, Madison was "regularly the best prepared and the most well-read of the participants in the many political events through which he lived for half a century."

Prior to Annapolis, Madison's studies focused on the "vices" which had caused historic confederacies to fail, which he catalogued in a written memorandum ("Notes on Ancient and Modern Confederacies") to which he would refer often in the future. The chief vice was the failure of the confederated republics to yield

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HOW TO REACH A SETTLEMENT OF HISTORIC PROPORTIONS

Continued from page 7

sovereignty to the central government. According to historian Miller, Madison reached the then-novel conclusion that a lasting union required that the federal government be empowered, like the states, to enact laws binding on all citizens.

When the Annapolis meeting fizzled for want of a quorum of represented states, Madison joined in a proposal by New York delegate Alexander Hamilton for a Philadelphia meeting in the spring of 1787, hoping to achieve fundamental reforms to the Articles of Confederation. He was, in historian Miller's words, "a partisan of a progressive movement."

Once the "great mediation" was scheduled, Madison put on his pragmatic politician hat during a three-day visit to Mount Vernon in October of 1786. During the visit and for months after, Madison attempted to convince George Washington, old enough to be Madison's father, to lend his prestige to the Philadelphia event by accepting the Virginia legislature's inclusion of Washington on its list of delegates. Washington, reluctant at first, was eventually persuaded that all he had fought for in the Revolution might be lost if the Philadelphia convention did not succeed.

In February of 1787 Madison was sent back to the Continental Congress in New York as a Virginia representative. There, he drafted a second memorandum to himself, which he called "Vices of the Political System of the United States." According to Joseph Ellis, this document "reads like an indictment of the Confederation Congress prepared by a relentless special prosecutor hell-bent on obtaining a conviction." The document addressed not only the failure of the confederated states and its Congress to meet federal responsibilities, but the individual states' failure to act in their own citizens' best interest. According to historian Miller, Madison based his conclusions on his own practical experience at the federal and state levels and on discussions with like-minded delegates such as Hamilton of New York and James Wilson of Pennsylvania.

In *Plain Honest Men*, subtitled "The Making of the American Constitution," historian Richard Beeman provides examples of the vices Madison identified, including the unwillingness of leaders who came of age during the revolution to entrust the Confederation Congress with the power to tax or regulate commerce, or to entrust their own governors (most of whom were selected by the state legislature) with the power to veto legislation. Unlike the states, the Confederation "government" had no executive or judiciary branches, and the Confederation Congress was severely limited by a structure giving each state a single vote and requiring the unanimous agreement of all thirteen states to amend the Articles of Confederation.

Madison also pointed to such state-level decisions as allowing debts to be paid with depreciated state currency, resisting the passage of religious freedom statutes, violating terms of the Treaty of Peace with England, and waging Indian wars without the consent of the Confederation Congress.

Of note, the "Vices" memorandum reached a theoretical conclusion that historian Ellis states is viewed as Madison's "most brilliant contribution to modern political science." Contrary to the longstanding truism that a republic could succeed only when it governed a small geographic area, Madison concluded that the ill effects of parochial interests and factions could best be mitigated in a large republic wherein the variety of interests would "check each other." As historian Beeman puts it:

In Madison's conception, governments were designed not to embody virtue and the public good, but, rather, to mediate among the various interests in society and, in the process, allow the public good to be served.

Historian Beeman also notes that Madison's progressivism was tempered by his traditional view that selecting virtuous political leaders was crucial, and his hope that such leaders would be more likely to emerge from the pool of talent in larger electoral districts. Slaveholder Madison

even touched on the "fallacious" notion that a government which supported slavery and denied suffrage to the majority of the free population was a true republic.

Lesson 3: Develop a Mediation Strategy (in collaboration with any allied parties)

Having armed himself with comprehensive knowledge of the nature of the problem at hand and the strengths and weaknesses of his proposed solution, Madison was the first non-Pennsylvania delegate to arrive in Philadelphia. He arrived on May 3, 1787, eleven days before the scheduled start of the Convention. He had urged other Virginia delegates to arrive early for the strategic purpose of preparing "some materials" that would allow Virginia to take the lead early in the Convention. He had written to Washington summarizing his views on the need for a complete overhaul of the federal government, a view he knew was shared by the great man and other distinguished delegates expected to participate in the Convention. On May 14 the Convention was well short of a quorum, at least in part due to the effect of heavy spring rains on overland travel.

Although the Convention did not start until May 25, all six Virginia delegates were present by the 17th, and Madison took advantage of the time to socialize and confer at length with them, notably Washington, George Mason, George Wythe and Virginia governor Edmund Randolph, as well as the Pennsylvania delegation, notably an aging but hospitable Benjamin Franklin, financier Robert Morris, transplanted New Yorker Gouverneur Morris and Scottish immigrant James Wilson. They all shared Madison's desire to for a stronger central government and were receptive as Madison took the lead during those crucial days in formulating the "Virginia Plan" for radical reform of the federal system.

In sum, Madison's diligence in preparing and his leadership in formulating strategy were, as noted by the historians quoted above, similar to the approach an effective attorney should take prior to an important mediation, arbitration or trial.

The Virginia Plan was notable both for its recommendations that were incorporated into the Constitution, and for those that were not. After all, most successful mediations require a willingness to compromise, and sometimes even the best prepared party must yield on a position once thought to be crucial.

The next installments of this series will cover the high points of the plan formulated by the Virginia and Pennsylvania delegates, and discuss the key compromises reached at what we now call the Constitutional Convention, including the tragic compromises dealing with slavery.



Recently retired **Judge Vincent O'Neill** is now a neutral affiliated with *Alternative Resolution Centers (ARC)*. He can be reached at voneill@arc4adr.com.

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SUPERIOR COURT EXECUTIVE OFFICER MICHAEL PLANET TO RETIRE



Ventura Superior Court Executive Officer Michael D. Planet will retire on May 31, 2021, after serving 20 years as the court’s head administrator. Prior to his appointment in 2001, he served as the Court Administrator of the King County Superior Court in Seattle, Washington, and as Deputy Court Administrator for the Maricopa County Superior Court in Phoenix, Arizona.

The court executive officer acts under the direction of the presiding judge and is responsible for overseeing the management and administration of the nonjudicial operations of the court. This includes budget, contracts, human resources, jury management, technology, records management, facilities, and liaison with other government agencies.

Mr. Planet is a past recipient of the California Judicial Council’s *William C. Vickrey Leadership in Administration* Award. The award, which is one of the council’s highest honors, recognizes individuals who demonstrate extraordinary leadership and make significant contributions to the administration of justice in California. The Judicial Council is the policy making body for the California Judicial Branch of government.

Presiding Judge Bruce Young also extends his best wishes and thanks to Mike Planet for his many years of dedicated service to the Court bench officers, the management staff, Court employees and the thousands of people the Ventura County Superior Court has served for the past two decades under Mike’s leadership.



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INTRODUCING: THE VENTURA COUNTY BAR SEXUAL ORIENTATION AND GENDER IDENTITY (SOGI) COMMITTEE

by Kate Wood and Micky Coyle

As queer lawyers, we are often profoundly discomfited by the conflicting duality of our position: on the one hand, we believe that the rule of law offers the most promising path to *aequitas*, justice in its most equitable form. On the other hand, queer people like us continue to be discounted and dehumanized by laws and legal systems designed to force assimilation to cisgender, heterosexual norms without regard for the trauma it inflicts upon the most marginalized members of our communities.

May 10 marked the 88th anniversary of the destruction of the Institute for Sexual Sciences by Nazi forces, setting off a series of book burnings and mass arrests of intellectuals in Berlin. The Institute, founded at the start of the 20th Century by Magnus Hirschfeld, a gay Jewish man, was the first of its kind. Described as a “research, teaching, healing, and refuge” for the transgender community, it became a renowned gathering place for scientists, academics, and politicians. (Schillace, Brandy. “The Forgotten History of the World’s First Trans Clinic” *Scientific American*, Springer Nature, May 10, 2021, <https://www.scientificamerican.com/article/the-forgotten-history-of-the-worlds-first-trans-clinic/>.) The Institute was the first primary care clinic in the world providing counseling, medical and surgical treatment for gender dysphoria, as well as free social and legal services to members of the European transgender community. In ordering the destruction of the Institute, its research and its library with over 20,000 works, the Nazi government invoked Penal Code 175, which outlawed homosexuality in the German confederation, a law dating back to the Christian Roman Empire. Hundreds of transgender patients were imprisoned, tortured and killed.

The Nazis weren’t the only government to use the law as a tool to persecute the transgender community. Lucy Hicks Anderson was a wife, chef, socialite, prohibition era entrepreneur, madame and a black woman living a happy life among Oxnard society for nearly three decades. (Keehnen, Owen, “Lucy Hicks Anderson,” edited by Victor Salvo; Legacy Project

Chicago, <https://legacyprojectchicago.org/person/lucy-hicks-anderson/>.) In 1945 when a breakout of venereal disease among local seamen was attributed to Lucy’s boarding house, all employees, including Lucy, were required to undergo a physical examination. (Rosenthal, Michele, “Lucy Hicks Anderson,” *Queer Portraits*, <https://www.queerportraits.com/bio/anderson/>.) When it was discovered that she was transgender, her marriage was voided and the Ventura County District Attorney’s office charged her with perjury for having signed her marriage license stating there existed “no legal objections to the marriage.” Federal prosecutors then charged Lucy and her husband, Reuben Anderson, with fraud based on Lucy’s receipt of spousal benefits from Reuben’s army pension. Lucy was incarcerated in a male federal prison. After her release from federal prison, local authorities prohibited Lucy and Reuben from living within Oxnard city limits. The couple spent the last few years of their lives living quietly in exile. (*Id.*)

Yet, we know the law can also protect, accept, and liberate. The rapid and remarkable progress to restore the dignity of LGBTQ+ people in this country is largely being accomplished through our legal system. Eighteen years ago, same sex marriages were unlawful in every state. It was only just in 2010 that the Ninth Circuit found Proposition 8, a California constitutional amendment banning same-sex marriage, to be unconstitutional. As we celebrate LGBTQ+ Pride Month this June, we are now also celebrating the sixth anniversary of nationwide marriage equality. June also marks the first anniversary of the Supreme Court’s decision in *Bostock v. Clayton County* (2020) 590 U.S. ___, 140 S. Ct. 1731, which held that no person can be discriminated against at work on the basis of their sexual orientation or gender identity. Courts can be allies; they are repeatedly upholding the self-evident truth that LGBTQ+ people are entitled to equal treatment under the law, assuring fairness in employment, housing, public accommodation, health care and more.

As the LGTBQ+ community makes gains in states like California, 2021 is proving

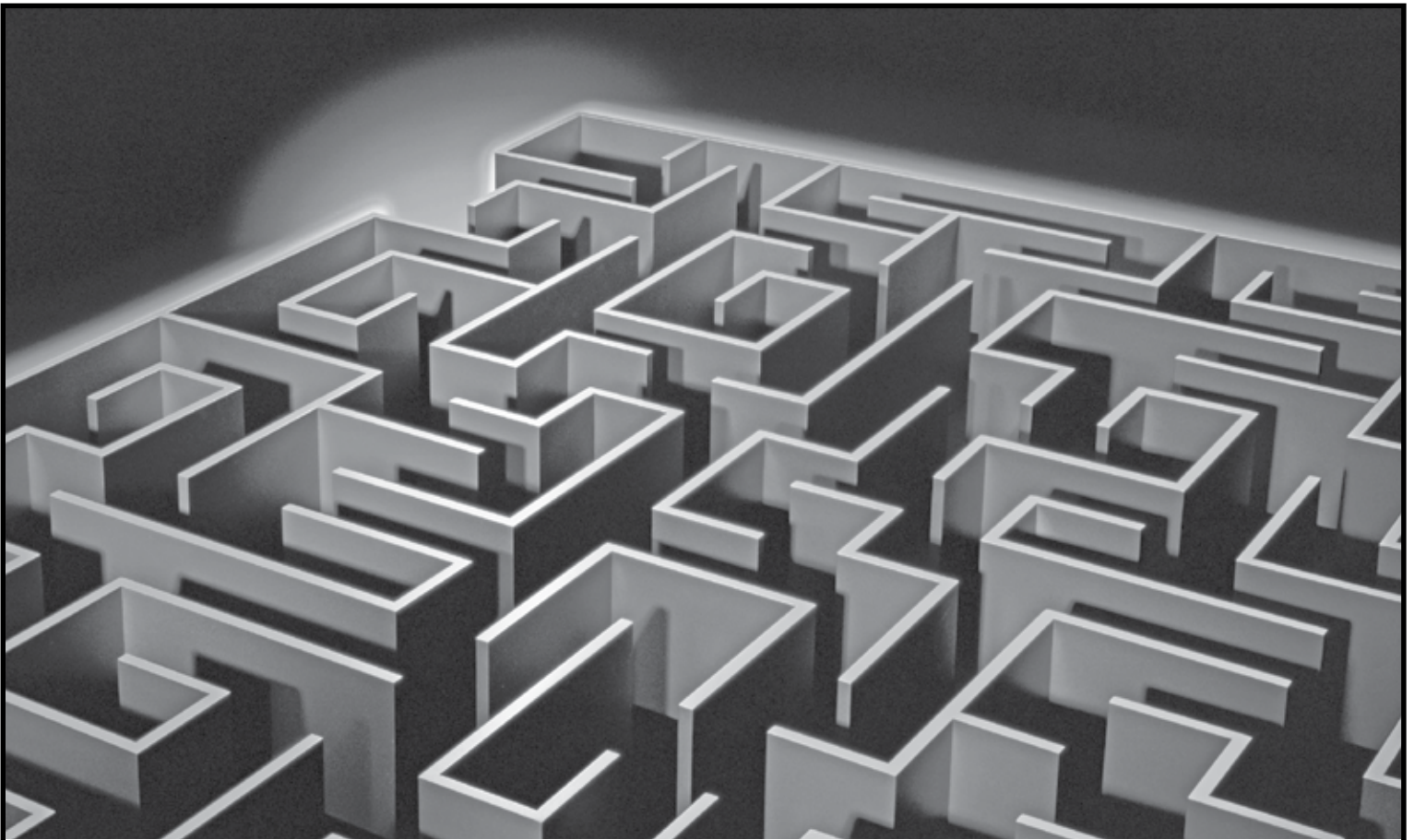
to be a year where discriminatory anti-LGBTQ+ efforts in other parts of the nation are rising. More anti-trans legislation has been introduced in the statehouses across the country than in any prior year. Some of those discriminatory bills have already been signed into law. As these efforts to codify bigotry so aptly remind us, the law is a sword; it can be wielded for harm just as readily as for justice. For the rule of law to clear the path for equity and inclusion, an army of righteous lawyers, legislatures, and jurists must dedicate themselves to the ongoing defense of human rights. *Aequitas* requires a never-ending commitment to what is good and equitable.

We don’t have to be activists, or civil rights attorneys, or members of the Supreme Court to further the experience of justice for LGBTQ+ people. We can help create *aequitas* in our daily practice by meeting our ethical and legal duties not to discriminate on the basis of sexual orientation and gender identity and remaining mindful that the role we play as navigators and decisionmakers within the legal system has lasting effects on the lives of those who come before us. We can remember the history of our profession, the ways in which the law has and continues to marginalize LGBTQ+ people, and we can actively resist that marginalization. We can actively listen to the feelings and the needs that LGBTQ+ people express to us and perform our work with empathy. Through these small acts, we can all work to liberate and empower our community.

To that end, we write to announce the founding of the Ventura County Bar Association’s Sexual Orientation and Gender Identity (SOGI) Committee. It is our goal to unite LGBTQ+ lawyers and provide legal professionals in our county with information, resources and support to offer competent legal services and further justice for the LGBTQ+ community.

Micky Coyle is a Senior Deputy District Attorney in the Sexual Assault Unit.

Kate Wood is a Staff Attorney for the LGBTQ+ Program at California Rural Legal Assistance and graduate of Indiana University McKinney School of Law.

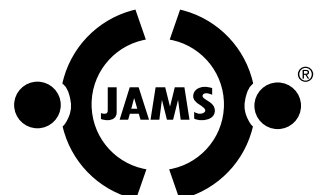


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RETURNING TO THE OFFICE: WHAT EVERY LAW FIRM NEEDS TO KNOW

by Laura Withrow



I completed this article May 14, 2021. With the speed that regulations and recommendations related to COVID-19 are changing, I hope at least part of this remains relevant by the time you read it.

After an unprecedented past 14 months, we are all anxious to get our professional and personal lives back to some semblance of normalcy. I will not presume to give you advice about your personal life, but I can offer some guidance on what your law practice may look like as we reopen.

The questions I am asked most often include: Should we mandate vaccines? Can we force employees to return to the office? Do we still need to make employees wear masks in the office? What benefits are employees eligible for if they develop COVID-19, are exposed to COVID-19, or are caring for someone with COVID-19?

Vaccine Mandates

California has expanded vaccine eligibility to those age twelve or older; however,

not everyone is on board with getting immunized. Employers are approaching this in various ways: some are mandating vaccines in the workplace; some are offering incentives for employees who get vaccinated; and others aren't concerned with who gets vaccinated.

The US Surgeon General has recommended that employers not mandate the vaccine. The Equal Employment Opportunity Commission (EEOC) says employers may require vaccines but specifies that enforcement may hinge on evaluation of “direct threat” issues.

If you implement a vaccine policy, you must provide exceptions for employees (1) who cannot be vaccinated due to an ADA-covered disability or other medical circumstance, or (2) who refuse a vaccine based on sincerely held religious beliefs, practices, or observances.

An employee may be excluded from the workplace for not being vaccinated if:

1. They pose a direct threat – does the unvaccinated worker pose significant risk of substantial harm, based on reasonable medical judgment, which cannot be eliminated by a workplace accommodation?; or
2. Vaccination is a safety qualification standard – requires an objective basis for the standard, historically tied to jobs protecting public safety. Standard must be job-related and consistent with business necessity.

The direct threat standard presents an extremely high bar. It will be critical to engage in an interactive process with the employee to determine whether a reasonable accommodation exists.

Rather than mandating vaccines, some employers are offering incentives to employees who get a vaccine. An EEOC-proposed rule permitted only *de minimis* incentives, but the Biden administration withdrew the proposed rule. Even so, I recommend keeping incentives to

a minimum, and consider offering alternative means to earn an incentive if the employee is unable to be vaccinated due to a disability or religious belief (e.g., watching a workplace COVID-19 safety video, or reviewing CDC literature on how to mitigate the spread of COVID-19 in the workplace).

I do not recommend mandatory vaccine policies for most workplaces. Current DFEH and EEOC guidance confirms employers may ask employees to provide proof of immunization, which I do endorse, especially in light of the varying standards for vaccinated employees.

Quarantine and Mask Requirements

On May 3, the California Department of Public Health issued guidance that fully vaccinated people do not need to quarantine if they are asymptomatic. A few days later, Cal/OSHA followed this lead and updated its COVID-19 Emergency Temporary Standards FAQs. (*COVID-19 Emergency Temporary Standards Frequently Asked Questions (ca.gov).*)

At this time, employees who are **not** fully vaccinated and who have been exposed to COVID-19 should quarantine for fourteen days. However, an exposed employee who is not fully vaccinated and who does not develop symptoms of COVID-19 may return to work ten days after the last known exposure. The employee does not need to have a negative test to return to work.

An exposed employee who **has** been fully vaccinated and who does not develop symptoms of COVID-19 does not need to quarantine.

On May 20, the California Occupational Safety & Health Standards Board will consider changes to the COVID-19 Emergency Temporary Standard Rules that, if adopted, will offer much-needed relief to employers. Under these proposals:

- Fully vaccinated or naturally immune workers (those who have tested positive for COVID-19 within the past 90 days) do not need to be excluded from work after a close contact so long as they remain symptom-free.

- Individuals who are actual COVID-19 cases, but are fully vaccinated before they become COVID-19 cases do not need to be excluded, so long as they remain symptom free and local public health rules permit them to remain at work.
- Fully vaccinated workers are exempt from masking if everyone in the same room is fully vaccinated and asymptomatic, or if the fully vaccinated employees are working outside and asymptomatic. Note that the definition of appropriate face covering is being revised to specify that it must be a medical, surgical, or two fabric layer mask, or respirator; therefore bandanas, scarfs, and single layer fabric masks will no longer be sufficient to meet the safety standard.
- Physical distancing requirements will expire July 31. Until then, this requirement is modified to require six feet of separation unless it is infeasible (as opposed to the current standard of impossible).
- Physical distancing requirements do not apply to locations where all employees are fully vaccinated.

California's COVID-19 Supplemental Paid Sick Leave (SPSL)

California's SPSL went into effect on March 29, retroactive to Jan 1. All employers with 26 or more employees are covered by SPSL. Employees are eligible for up to two weeks of paid leave if they are unable to work (or telework) because: (1) the employee is subject to a quarantine or isolation period related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) the employee has an appointment to receive a COVID-19 vaccine; (4) the employee is experiencing symptoms related to a COVID-19 vaccine; (5) the employee is caring for a family member who is subject to quarantine or isolation order; or (6) the employee is caring for a child whose school or place of care is closed or otherwise unavailable due to COVID-19.

Full-time employees are eligible for up to 80 hours of SPSL. Part-time employees are

eligible for the total number of hours they are normally scheduled to work over a two-week period. Pay is capped at \$511 per day and an aggregate of \$5,110.

Employers are required to provide notice to employees of their right to SPSL. California's Department of Industrial Relations (DIR) has published a poster explaining the law, which should be displayed in a conspicuous place in the workplace and sent electronically to employees who are working remotely. (*2021 COVID-19 Supplemental Paid Sick Leave (ca.gov).*)

An employee's SPSL must be reflected on their paycheck stubs. Paid leave under the SPSL is in addition to any other paid sick leave provided by the employer; therefore, it must be set forth separately from regular paid sick leave.

The DIR released a detailed FAQ explaining the SPSL and the various obligations imposed on employers. (*2021 COVID-19 Supplemental Paid Sick Leave FAQs (ca.gov).*) This is a great resource for employers handling COVID-19 sick pay issues.

Federal Emergency Paid Sick Leave and Expanded Family and Medical Leave

One of the first COVID-19 federal bills passed last year, the Families First Coronavirus Response Act (FFCRA), took effect April 1 for private employers with fewer than 500 employees, creating both the Emergency Family and Medical Leave program (EFMLA) and emergency paid sick leave (EPSL).

The mandate to provide these benefits expired on Dec. 31, 2020; however, the second stimulus bill, called the Heroes Act, allowed employers to continue voluntarily providing EPSL and EFMLA that had not been used in 2020, and to receive the tax benefit through March 31.

On March 11, President Biden signed the \$1.9 trillion American Rescue Plan Act which, among other things, allows employers to continue to **voluntarily** provide EPSL and EFMLA, and extends their ability to claim the tax credits through Sept. 30.

RETURNING TO THE OFFICE: WHAT EVERY LAW FIRM NEEDS TO KNOW

continued from page 15

As of April 1, employees are eligible for either EFMLA or EPSL if (1) the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the employee is advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; (3) the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis; (4) the employee is obtaining a vaccination related to COVID-19; (5) the employee is recovering from an injury, disability, illness, or condition related to a COVID-19 vaccination; (6) the employee is seeking or awaiting the results of a diagnostic test or medical diagnosis because they were exposed to COVID-19 or their employer has requested such a test or diagnosis; (7) the employee is caring for an individual who is subject to an order as described in (1) or has been advised as described in (2) above; (8) the employee is caring for their son or daughter because the child's school or childcare is closed, or the childcare provider is unavailable due to COVID-19 precautions; or (9) the employee is experiencing any other substantially similar condition as defined by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

A. Emergency Family and Medical Leave (EFMLA)

Employees who have worked for the employer for at least 30 calendar days may be eligible for up to 12 weeks of **paid** FMLA leave if they cannot work (or telework) for any of the foregoing those nine reasons. Employees must be paid two-thirds of their regular rate of pay each day of leave taken, based on the number of hours the employee would otherwise be regularly scheduled to work, up to a cap of \$200 per day and an aggregate of \$12,000.

Employees are to be returned to the same or equivalent position at the conclusion of the leave. If no such position exists, the employer must make "reasonable efforts" to contact and reinstate the employee during the year following the conclusion of the leave period.

B. Emergency Paid Sick Leave (EPSL)

Full-time employees are entitled to 80-hours (two weeks) of emergency paid sick leave. Part-time employees are entitled to a proportional amount of EPSL depending upon the average number of hours they typically work in a two-week period.

EPSL benefits are capped at \$511 per day for the worker's own care and \$200 per day when the employee is taking care of someone else.

Employees who already used their EPSL allotment in 2020 are provided another 80 hours as long as the employer voluntarily grants its use.

Leave provided to an employee after Jan. 1 pursuant to EPSL will count against the employee's SPSL (see above) if the leave is available for the same reasons and provides pay at the same rate as SPSL. For example, a full-time employee who utilized ten hours of EPSL earlier this year due to their own COVID-19 illness will have ten fewer hours available to them for SPSL leave. However, if the same employee utilized their EPSL to care for someone else and therefore was paid at the lower rate, then that leave does not count towards their available SPSL.

It is important to remember that employers are no longer **required** to provide either the EFMLA or EPSL benefits; however, if they do, they will receive a payroll tax credit for the paid leave or EPSL provided to eligible employees. Many of my clients have elected to voluntarily continue the EPSL, but not the EFMLA. Whatever you decide to do, it should be subject to a written policy which is distributed to all employees.

Telecommuting

A year ago, COVID-19 caused law firms to quickly move out of their offices. We were forced to embrace remote work for attorneys and staff, and the expectation is that much of that will continue. A recent survey of national law firms reflects that most don't expect to fully return to the office until sometime in the Fall, and

almost all anticipate that some degree of work from home will continue.

There are employees who love working from home, and others who can't wait to get back to the office. Law firms have an opportunity to improve firm morale by surveying employees to determine their preferences and accommodating them where practical.

If you are going to require employees to return to the office, be sure that you are implementing all of the necessary health and safety protocols. Many employees began working remotely last Spring without prior warning or training, and without clear guidelines about expectations. If employees are going to remain remote, or work some sort of hybrid schedule, then it is important to clarify the policies and procedures they are expected to follow.



Laura Withrow represents California employers in the defense of litigation and administrative claims, and provides counsel on compliance issues related to employees.

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COMMUNITY-CENTERED LEADERSHIP – CARMEN RAMÍREZ ELECTED TO VENTURA COUNTY BOARD OF SUPERVISORS

by Vanessa Frank, Elvia Garcia and Vanessa Valdez



It was never a sure thing that **Carmen Ramírez** would be elected as Ventura County's Supervisor, especially that she would defeat Oxnard's Mayor Tim Flynn in the 2020 elections during a global pandemic. To meet her now, several months into her position representing the Fifth District, it would be easy to assume this knowledgeable, clever, dedicated public servant was a shoo-in and that it was always her destiny to serve in this position. But Ramírez herself would tell you, "When I was engaged in litigation against government entities for failing my clients, it never occurred to me to run for office. As a young high school student, achieving my dream of being a lawyer seemed like a fantasy, an unreachable star."

So, how does a person become the first Latina woman, and only the second Latin person, on the influential County Board of Supervisors? Her partner Roy Prince would say, "Carmen will tell you it takes a village." Santa Barbara's First District Supervisor and former state Assembly member Das Williams counts himself among Ramírez's many protégés. He attributes part of Ramírez's success to her work ethic and to showing up for her community. "Even as a veteran of many campaigns, Carmen was never too proud to show up at a Public Comment and speak out for what was right."

Ramírez's work for justice has deep roots, stretching back to her own Jesuit education in southern California. Her experiences and deep roots to the community have influenced her perspective and values. She first came to Ventura County in 1978 with a cadre of other talented and dedicated organizers with the United Farmworkers, in support of local mushroom workers who were underpaid by West Foods. Fortunately for our county, that strike was just the beginning of Ramírez's work, linking the fight for justice for workers, immigrants, and the environment together. One of her colleagues from that era, Karl Lawson (now an official with the Oxnard Housing Department) calls Carmen the "fulcrum" of advocacy in our area. He says, "Carmen has that constant and unwavering understanding that it takes years or decades to bring some progress. She is not a flashy, headline-grabbing official. When you are dealing with entrenched and powerful monied interests, you need a great deal of perseverance. She looks for the way to frame the issue so that everyone can embrace the proposal, bring everyone together."

For Ramírez, it matters that our government and institutions reflect our community for so many reasons. It builds trust and confidence, and people from marginalized communities where poverty is pervasive may have different and important understandings about strategies to serve everyone in our community. If we all have opportunities and equal access to quality jobs, housing, health, education, our whole community can thrive.

Those newer to Ventura County, or to the legal profession, might not be aware of the many campaigns Ramírez has championed towards inclusion. Following the mushroom strike, Ramírez stayed on and took on leadership at Channel Counties Legal Aid, a federally funded legal services provider for low-income individuals and families. **Barbara Macri-Ortiz** joined Ramírez there as well after the West Foods case and speaks with fond respect of the array of cases, large and small, that Ramírez took on behalf of her clients: wage and

hour, housing, healthcare, education, social security, domestic violence. Macri-Ortiz, a legend in her own right as an advocate for working families, particularly ensuring access to affordable housing, remains impressed by the way Ramírez was able to bring in volunteer attorneys both at Channel Counties, and later, through the Superior Court. Joining Ventura Superior Court as part of their Self-Help programs, Ramírez looked for ways to lower the barriers for people to get help. Sometimes it is hard for people to come to the courthouse on Victoria Avenue. So, Ramírez took the courthouse to them, opening the Self-Help Center in the La Colonia neighborhood of Oxnard. There, she, her staff and a regular roster of volunteer attorneys could provide people with services in a safe and familiar environment. Macri-Ortiz recalls her bringing "a lot of volunteers to the clinic. She had the public defender's office there, she brought tax preparers, anything to support the community."

It is always timely to recall Ramírez's work to ensure inclusion of all people in our community, especially this year. Lawson credits Ramírez's indefatigable efforts in support of the national census in both 1990 and 2000, and the subsequent redistricting work, with ensuring that the people in our county are represented. That is another story of bringing seemingly disparate folks together, and the community college districts. Her election also reflects the demographics of the Fifth District she represents.

Reflecting on her career, Ramírez admits perhaps a little surprise at where she has arrived. "Sometimes I have to stop and realize that I was really elected. I am glad to be of service to my community at this difficult time." Already this year, the Board has appointed both a new District Attorney (**Erik Nasarenko**) and County Counsel (**Tiffany N. North**). "I have been able to advocate for the best health and economic responses for our community. County government, unlike the city government where I served for ten years, is legally responsible for public health. But when the

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campaign for the Board began in March 2019, I surely did not expect that I would have the responsibility for the actual lives of Ventura County residents in such a direct way.” It is all the more poignant that Ramírez remained clear-headed during this time, even though, within a month of being sworn in as Supervisor, her beloved brother fell ill with COVID and died, “just as we seemed to be turning the corner with the vaccine’s availability. It is crushing to know that he could have survived if only...,” she trails off.

For attorneys in our county and beyond, it is so meaningful that Ramírez now sits on the Board of Supervisors. She brings the voices of so many people who have never been truly heard by the powerful with her into every meeting. She brings her gifts of communication and bridge-building, and she brings that commitment of justice to all.



Vanessa Frank is an immigration attorney and human rights activist based in Ventura.



Elvia García is a bilingual family Law and estate planning attorney, serving Ventura and Santa Barbara Counties.



Vanessa B. Valdez is a Chicana lawyer and civil rights activist who specializes in family law and employment law.

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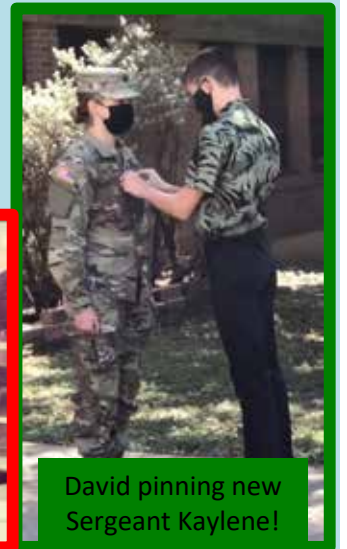
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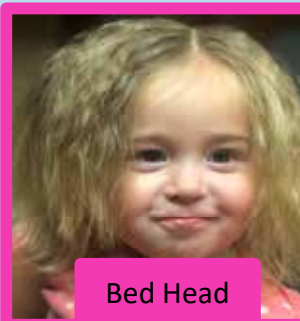
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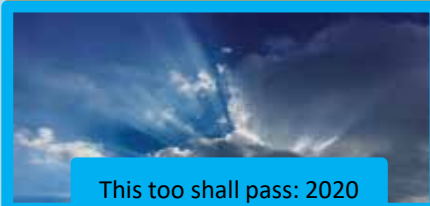
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