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*Cover: In Morro Bay, an otter buoys her pup, who won’t swim alone until it is several weeks old. Photo by Tara Jacobi.*

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# President's MESSAGE



## Education Opened My Eyes and My Mind...

by Melissa Chabra

*“The ability to read, write, and analyze; the confidence to stand up and demand justice and equality; the qualifications and connections to get your foot in that door and take your seat at that table— all of that starts with education.”*

—Remarks from a speech made by Michele Obama at “Let Girls Learn Event Celebrating International Women’s Day” on March 8, 2016.

Education has been at the forefront of my mind recently, and the quote above perfectly encapsulates why education is so important. I have been thinking about the role education has played in my life, as I have just finished reviewing scholarship applications for the San Luis Obispo County Bar Association Scholarship.

Nothing is more inspiring than reading about the achievements and aspirations of ambitious young students. Although all of the applicants have impressive grades and coursework, the heart of each application is found in the essay, where they have an opportunity to make their voice heard and explain their individual journeys.

As I reviewed each new application, their stories of hope

and determination leaped off the page. Of note, although it is not a requirement for the scholarship, many of them will be the first in their families to attend college; ready to embark on an exciting, scary, overwhelming journey that they know little about.

First-generation college students can face many obstacles on their way to a diploma, including financial stress, lack of family support, gaps in educational foundations, and a feeling of not belonging. Most of all, there is a constant feeling like you missed orientation day, or someone forgot to pass you the memo.

If it sounds like I am speaking from personal experience, it is because I am. I am the first person in my family to have attended and graduated from college. When I was 18 years old my parents dropped me off at LAX

with two suitcases, and I flew by myself to begin my studies at Smith College in Massachusetts, a state where I did not know anyone. I knew that I had no idea what I was doing, but in no way did I comprehend just how clueless I was. I didn’t know what I didn’t know. But I felt it.

There was this perpetual feeling that everyone around me understood the system and was more prepared than I was. They came from high schools that offered AP courses I had never even heard of. They had traveled far and wide, and I didn’t even have a passport. They arrived at the college prepared not just for the practicalities of new dorm life (like hangers!) but with an innate knowledge of how things work. In contrast, not only did I not have shelves or hangers or a mini-fridge, I didn’t even realize

at first that I had to buy my own books—or just how expensive those books would be.

However, despite the struggles that came with adjusting to and learning the college culture, that college changed my life. Education opened my eyes and my mind to an entire world that I didn't even know existed.

When ruminating on my journey through education, I've realized that my college education and experiences have both changed my own life, and they have also changed entire generations to come after me.

My children are living a wholly different life than what I experienced as a child, and they are now benefiting from my experiences. For them, there is no question of whether they will go to college, only where. When

they show up to college on that first day, they will have read the memo. They will have the benefit from that internal knowledge. Research has shown that a college degree can spur forward progress and success not only for the degree holder but for successive generations. I suppose my story is a living example of that concept.

You, too, have an opportunity to contribute to the education and success for future generations by donating to our scholarship fund. This year, the summer social for the Bar Association will be held July 25, and we will also be using the evening as an opportunity to fundraise for our scholarship endowment.

We need to grow the endowment in order to continue offering a yearly scholarship. Our eventual goal is to be able to offer

multiple scholarships each year. We can't do this without your support. When the endowment was started several years ago, many of you made generous donations, but have not since. I'm asking all of you to continue supporting these aspiring students, the future leaders of our community.

Please scan the QR code below and give something today, *now*, before you forget. Even if it is just \$25, please donate it *now*. Right *now*, before you set this journal aside, or get distracted by a phone call or an email. It's easy and will only take you a minute, but the effects can last a lifetime.

I have seen the generosity of this legal community show up before; please don't prove me wrong.

When I see you all at the summer social in July, we will have the opportunity to meet the latest scholarship winner and hear a little about their amazing story. Prepare to be awed and inspired by the strength and perseverance of the scholarship recipient. I regret that there will be only one this year, but I aspire to change that in the future. Help me by donating today! ■



*Melissa Chabra attended Smith College in Massachusetts and was the first in her family to attend college.*



**To make a donation to the San Luis Obispo County Bar Association Endowment, please scan the QR code.**



## Editor's Note

by Tara Jacobi

I lost my mom over 10 years ago now. Later in life, she became my best friend. I always thought my dad was the quiet tower of strength in the family as the Vietnam Veteran, but as I grew up I came to realize all the hidden strength my mother possessed. She was raised by two women. Her mother and her grandmother raised her and her identical twin sister.

Her father left after returning from World War II. My grandmother was the breadwinner. She quit school at 16 and worked in sewing factories, making hats and other things all her life. She was also married and divorced twice. It was a tremendous stigma for my mom and her twin to grow up in the 1950s with a single divorced woman.

My favorite story my grandmother told was about the ending of her second marriage. One morning she was making breakfast and running late for work, which she hated to be. Her spouse yelled into the kitchen, "Edna, hurry up with my breakfast, I am going to be late for work." At that point, she threw the frying pan at his head. And that was the end of her second marriage. She always told me marriage was not for her. She said this while she violently shook her head saying, "No, no, no, not for me."

My grandmother was raised in a family with three brothers. She was an extremely independent woman for her time. Once while I was in college, I was writing a paper while studying women's history and feminism. I asked if I could interview her about feminism. She was baffled by all the theories I was studying, and she knew little about what the college-educated women in my books were theorizing about women. Yet, her life story was the embodiment of what the authors wished for women in terms of living free from constraints that no longer served them, such as a marriage of the 1950s.

Despite not having a father in the house, there were lots of father figures in my mother's life; her mother's brothers, all successful men, were always around. Later in life, my mother's twin sister, my aunt, lived with their mother. My mom was her twin sister's champion during a debilitating divorce and throughout her life after.

After the passing of her grandmother (my great-grandmother), and her mother, who lived in her childhood home on Long Island, my mom was left with cleaning up the mess of dealing with her mother's estate. Her mother died without a will but with lots and lots of heirs with claims to the family house.

My mom worked her entire life as a nurse in different settings. At one point, she fought for health care insurance for nurses who did not have their own health care options—and was terminated from her job for doing so. She was never quiet. Her strength of character made people take notice.

It is around this time in May, for Mother's Day, that I miss them most. Growing up, it was their tradition to go out to brunch at a restaurant my grandmother, mother and aunt all enjoyed. I have to create my own traditions now with my son. When my parents were alive and retired, they regularly summered in Morro Bay. Now, I always enjoy being there going to the places they enjoyed. One day last spring, I got lucky while walking around in Morro Bay near the water to witness this mother otter and her baby up close.



Our parents have a significant influence over us as people, for better or for worse, even long after they are long. I suspect the parents of students participating in mock trial this year are very proud watching their sons and daughters try on the adult job of being a lawyer. Take a look at John Frick's article giving us the update about this year's mock trial competition.

Happy Mother's Day. And happy reading. ■

The San Luis Obispo County Bar Association Endowment  
to Assist Persons of Color in Pursuit  
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See Scholarship eligibility criteria and donation details at [www.slobar.org](http://www.slobar.org).  
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# Mock Trial and America's Future— A New Hope

by John Fricks

Images courtesy of John Fricks

The headlines of today speak, nationally, to the unprecedented challenges to the rule of law in our country and, locally, about the thousands of partygoers resurrecting the chaos of Poly Royals' past in an "observation" of the long-ago death of Ireland's patron saint. It is enough to make some pessimistic about the direction of our country in general, and its youth in particular.

Despite all of the noise, I remain optimistic. I guess I have always been a "glass half-full" kind of guy—though I used to say the glass was "twice as big as it needed to be" as a paean to practicality—but there is a reason I can be confident that our future is not as dire as the doomsayers predict.

I've been intimately involved in Mock Trial (MT) for 42 years (see incriminating photo from 1982 high school yearbook), the last 25 of which I have been the chairperson of the MT Committee in San Luis Obispo County. With that vantage point, year after year, I have seen the dedication, intelligence and passion of students (and teacher coaches, attorney coaches, judges and court administrators) who make this longest-running academic competition what it is today. A number of you have coached MT; many more of you have scored a round (or several) of the MT competition.

If you've seen MT and have been paying attention, you will marvel at these students expanding their minds and skills, *learning* stuff as an extracurricular activity(!), and gaining an understanding of the rule of law and what it means to be a citizen in a democracy. Not for nothing, the nonprofit who runs MT throughout California rebranded this year... going from the Constitutional Rights Foundation to Teach Democracy. Timely, no?

Over my four decades (*gulp*) in MT, I have seen kids use MT to turn their lives around (one went from a continuation school to being a police officer); decide *not* to go to law school (saving themselves law school tuition costs); and still others confirm that the pursuit of law is their destiny. (I may have fallen into two of these categories...see photo.)



"Incriminating photo from 1982 high school yearbook."



"I may have fallen into two of these categories...."



This year, we celebrated our first SLO County MT alum who has become a local superior court judge. We have a cadre of dedicated MT volunteers. With MCLE being offered for scoring a round of MT starting this year, I am hoping that more of you come out next year to support our MT program and join us in nurturing the future of our country and community.

This year, the MT competition saw Morro Bay repeat as county champions in the high school division and Paulding Middle School three-peat as middle school champs. The middle school competition was so tight that Paulding needed to win its last MT trial to qualify for the semifinals (it did, in a squeaker), only to see it go through and upset the undefeated #1 seed, Laguna Middle School, to bring home the crown.

Bragging rights for this year go to attorney coaches: Morro Bay—Christine Dietrick, Gary Ottoson, Dan Clement, Curtis Bradley, McKenzie Taffe; and Paulding—Scott Lewis.

Sending out much love and thanks to MT Committee members: Greg Connell, Greg Devitt, Hon. Matthew Guerrero, Nicole Norris, Michael Powell, Lisa Sperow and Sheryl Wolcott. The MT Committee welcomes Hon. Crystal Seiler to the committee next year. ■

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# What's New in Tort & Trial 2023?

by Raymond Mattison

What's New in Tort & Trial 2023 presented all of the tort and trial cases for 2023. Here are the "top 10" that any practitioner could use.

## 1 *Sitrick Group, LLC v. Viverra Pharmaceuticals, Inc. (2023) 89 Cal.App.5th 1059.*

Medical device maker retains a JAMS arbitrator under a contract that *informed the client that the arbitrator would make no further conflict disclosures after the signing of the arbitration agreement*. Soon after the contract was signed a partner of the arbitrator was retained by Plaintiff, Sitrick, to handle an unrelated matter. The manufacturer's motion to recuse was denied by the JAMS panel. They then failed to appear at the arbitration where a \$556,000 award was issued. The manufacturer moved to set it aside because of the failure to disclose this potential conflict. **Held**, the contract disclosure was enough and there was no continuing duty to disclose.

## 2 *Rattery v. Favro (2023) 97 Cal.App.5th 578.*

This is a great review of the scope of the "fireman's rule." It prohibits suits by firefighters and others against the victims of a fire (CC 1714.9). Here, the defendant crashed into a firetruck and, while the firefighters were treating *him*, **another car** crashes into them. They claimed that the defendant's conduct increased the risk of the second accident. The trial court granted summary judgment. The appellate court reversed, finding there was a triable issue of fact as to whether exception (a)(1) might apply: [The firefighter may sue] ...where the conduct causing the injury occurs after the person knows or should have known of the presence of the . . . firefighter." (§ 1714.9, subd. (a)(1)).

## 3 *Gutierrez v. Tostado (2023) 97 Cal.App.5th 786.*

The court expands the reach of MICRA to **non-patients who are not receiving care**. Here, the ambulance driver is taking a patient to the hospital when he runs into the plaintiff's car on the highway.

Plaintiff filed within the two-year personal injury statute of limitation. **Held**, plaintiff was bound by MICRA and its one-year statute of limitation—case dismissed. So, a doctor rushing to the emergency room to treat someone would also be covered by MICRA if she hits someone on the way?

## 4 *Gropen v Superior Ct. (2023) 89 Cal. App. 5th 292.*

This is a roadmap for requesting and obtaining accommodation at a deposition (CRC Rule 1.100). A PTSD victim refused to proceed unless his wife be present for comfort and support. The Rule requires that the request be made within *5 days of implementation*. The day before a hearing on the defense request for a protective order compelling the deposition, plaintiff filed and served the request. The court granted the motion and refused to consider the accommodation request as "untimely." Reversed, the request must be made at least 5 days before implementation; and, the deposition at issue would have to occur more than 5 days after the hearing on the Protective Order.

## 5 *Deck v. Developers Investment Co., Inc. (2023) 89 Cal.App.5th 808.*

After what the discovery referee described as the most blatant disregard of discovery and discovery orders he had seen in 20 years, the court ordered monetary sanctions of \$37,575 and punishing issue sanctions. The defendant appealed both orders. **Held**, issue sanctions are not appealable until post judgment. Monetary sanctions are directly appealable under CCP 904.1(a)(11-12) unless they are "inextricably intertwined" with the issue sanctions.

## **6** *Blaylock v DMP 250 Newport Center, LLC* (2023) 92 Cal.5th 1222.

This case is the latest on the so-called “*Privette Doctrine*” which limits a third party’s liability (usually a landowner, as here, or a general contractor) for injuries only under specific exceptions: “[A] landowner may be independently liable to the contractor’s employee, even if it does not retain control over the work, if: (1) it knows or reasonably should know of a concealed, preexisting hazardous condition on its premises; (2) the contractor does not know and could not reasonably ascertain the condition; and (3) the landowner fails to warn the contractor.” (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 675). A contractor employee is injured while working in an air duct when a panel gave way causing him to fall. Here the injured contractor employee could, at the most, prove that the landowner “should have known” that the condition was present. The plaintiff presented no facts to show the defendant knew it was “dangerous” or that it was concealed from a worker.

## **7** *Hacala v Bird Rides, Inc.* (2023) 90 Cal. App.5th 1068.

A pedestrian trips over one of the rental scooters left by users on sidewalks all over many cities. Both the city and the scooter rental, Bird Rides, were granted summary judgment. The city had no notice and other defenses. Further, the contract/permit granted by the city placed any responsibility on Bird Rental. The trial court ruled that Bird had no duty to remove the scooter unless it had actual knowledge of the hazardous condition. The appellate court upheld as to the city; but reversed as to Bird Rides finding it had a continuing duty as to the abandoned scooters at least under the contract (e.g., “... to have staff available 24 hours a day for emergency scooter removals...”) and probably under a general negligence standard for its failure to have some plan for removal of abandoned scooters that do create a hazard.

## **8** *Pollack v Superior Court* (2023) 93 Cal. App.5th 1348.

Plaintiff was sanctioned for his failure to identify each document by reference to the request number

in his “formal response” to the production demand. “For clarity, we wish to maintain the distinction between a formal response to a production demand—i.e., a statement of compliance, representation of inability to comply, or assertion of objection—any objections—and the production itself.” Reversed, the “formal response” need not refer to specific documents, just to the number of the request that was made. The “formal response” must be verified unless only objections; the production itself does not require verification.

## **9** *Tansavatdi v Rancho Palos Verdes* (2023) 14 Cal.5th 639.

The only Supreme Court case in our top 10 is an opinion by Justice Groban on the scope of the “design immunity” (GC 830.6) which precludes liability where the plan or design of a roadway was properly approved by the entity. Here, a bike lane ended suddenly and did not resume for a distance in order to provide for street parking. This element was dangerous and resulted in the death of a bike rider. “We must determine whether design immunity is limited to claims alleging that a public entity created a dangerous roadway condition through a defective design, or whether the statutory immunity also extends to claims alleging that a public entity failed to warn of a design element that resulted in a dangerous roadway condition.” Design immunity does not bar liability for the failure to warn of a dangerous condition—the gap in the bike lane confused both drivers and riders.

## **10** *Long Beach Memorial Medical Center v Allstate Ins.Co.*(2023) 95 Cal. App.5th 710.

Like Medicare and MediCal liens, the parties must satisfy a hospital’s lien as part of a personal settlement as well (HLA CC 3045.1-3045.6). It is common to provide a check from the settling insurer (here, Allstate) made payable to both the lien claimant and either the plaintiff or his/her attorney. Here that was done, but the hospital never received the check. It maintained it should have been payable only to it. Court agreed that lien payments of this type should be made payable to the hospital and no one else. ■

# SLOLAF Doubles Attorney Count in 2023

by Donna Jones, SLOLAF Executive Director

Images courtesy of SLOLAF

To say that San Luis Obispo Legal Assistance Foundation (SLOLAF) has been growing like crazy the last few years would not be an overstatement. We've been fortunate to bring on new service areas in Civil Law Services and added Family Law Services a year ago.

During the last few months, SLOLAF has been blessed with the arrival of four (yes, four!) additional staff attorneys, bringing our attorney count to eight. These eight are supported by an amazing legal support team of five, most bilingual, who help them focus on SLOLAF's mission of providing legal services and resources to people in need. Our legal team is small but growing—and mighty!

On the Civil Law Services team, we brought on Staff Attorneys Leesa Andrade, Lennon Bancroft and Frank Kopcinski during summer and fall 2023. On the Family Law Services side, Sabrina Basma joined us in late fall 2023. Leesa and Frank's faces

may be familiar since they've been in the SLO County legal arena for several years, whereas Lennon and Sabrina are fairly new on the scene. Please join us in welcoming all of them. Let's see what they have to say about their time here at SLOLAF so far.

## WHAT INSPIRED YOU TO GO INTO LAW?

**Frank:** As a student of sociology during my undergraduate years, I knew that there was so much inequality in the world and that I wanted to make a positive impact in society. It seemed to me that my professors had a lot of great solutions to societal problems, but very seldom did their solutions get implemented. After realizing this dynamic, I felt a legal career was the best path forward I could take in creating beneficial change in society.

**Leesa:** I began working for civil law firms in the Bay Area when I was 18. Witnessing attorneys advocate in the courtroom and in their written arguments inspired me. I first decided I wanted to work with indigent people when I became a clerk at SLO Superior Court in 2006. As a clerk, I met several people, most of whom didn't have the money to hire private counsel, dealing with very scary legal situations, who needed qualified people to advocate for them.

**Lennon:** My undergraduate studies, specifically an Environmental Ethics course, set me on a path away from medicine and toward

urban planning and environmental law and policy. I was inspired to do work that could indirectly improve human health by addressing environmental health.

**Sabrina:** I have always been interested in the interplay of justice and societal order. I have also always been very curious. My father first planted the idea of becoming an attorney in my head, so I decided to take on the challenge. I did not come from a family of attorneys; in fact, I don't have any attorneys in my family. Thus, I knew that taking on this challenge would in fact be a journey, however, a journey that I was excited to go down. I knew that attorneys inherently help people, and I have always known that helping people is what I wanted to do with my life. I am very glad that I took up the challenge and am happy to serve my community.

## WHAT WERE YOU DOING BEFORE WORKING AT SLOLAF?

**Leesa:** In the four years prior to joining SLOLAF, I worked



Frank Kopcinski



Leesa Andrade

as a Public Defender with SLO Defenders, first in the juvenile division and then handling adult misdemeanor matters. In this capacity, I learned a great deal from my colleagues and senior attorneys at SLO Defenders, as well as the other courtroom players, and my clients. Although the misdemeanor calendar was extremely fast paced and challenging, the role of defending the criminally accused was a rewarding experience, mainly because it brought with it the awesome responsibility of ensuring that the constitutional rights of my clients were not disregarded.

**Frank:** I worked briefly as an Associate Attorney at Carmel and Naccasha LLP, and before that I was the Directing Attorney for California Rural Legal Assistance for almost five years, both here in San Luis Obispo.

**Lennon:** Prior to working at SLOLAF, I briefly did some environmental planning work, but my career has primarily been working in project and product management for technology companies, most recently as a contract project manager for Lam Research.



*Lennon Bancroft*

**Sabrina:** Prior to working at SLOLAF, I was living in San Diego for four years, where I attended law school, passed the bar exam, and worked at one of the largest private family law firms in the county.

**WHAT MADE YOU WANT TO WORK FOR SLOLAF?**

**Lennon:** The first time around, I was fortunate to have the opportunity to work with SLOLAF as the office administrator while attending San Luis Obispo College of Law in the evenings. I saw first-hand the positive impact SLOLAF's free legal services had on our community's most vulnerable citizens. I am thrilled to be doing great work the second time around with SLOLAF as a practicing attorney!

**Sabrina:** I appreciate SLOLAF's message of providing services for those that are in need. Throughout my law school experience, I knew that I wanted to help people, thus public service was at the top of my list in terms of jobs I wanted. I was also very interested in family law, as I believe a lot of help is needed in that area. When the opportunity at SLOLAF presented itself to me, it was exactly what I was looking for. Having been working here for a few months now, I know that I've made the right choice.

**Frank:** I was excited about the possibility to work helping low-income residents of San Luis Obispo County again. Also, the benefits, work-life balance, and opportunity to continue on the Public Interest Loan Forgiveness track definitely attracted me to SLOLAF.

**Leesa:** After working in criminal law for several years, I wanted to explore other ways I could help people outside of that realm, and possibly help prevent people from winding up in the criminal justice system in the first place. We are all aware of the current housing crisis and the fact that there is a strong correlation between homelessness and crime.

By joining SLOLAF, I hoped to help people stay housed and, thereby, avoid "homeless crimes." Those acts, such as illegal lodging, loitering, trespassing—all of which are an intrinsic part of homelessness—make otherwise law-abiding people criminals. When a person who is homeless and also mentally ill and/or addicted to drugs and alcohol, their chance of getting out of the criminal justice system is difficult to say the least.

To prevent the same kind of misfortunes, I hoped that by working with SLOLAF, I could help ensure that people's government benefits are not arbitrarily reduced or denied. Let's face it. Most people who rely on government assistance don't receive enough to live on. To further cut an elderly and/or disabled person's benefits with only a

*Continued on page 14*



*Sabrina Basma*

## SLOLAF Doubles Attorney Count continued

cryptically written notice and no due process just adds insult to an already injured population.

### WHAT KIND OF CASES DO YOU WORK ON AT SLOLAF?

**Sabrina:** At SLOLAF, I work on domestic violence restraining order cases and stand-alone custody cases where I represent survivors of domestic violence, harassment, stalking and sexual assault.

**Leesa:** I mainly handle landlord/tenant cases, in which I represent the tenant who is currently being evicted or living in sub-standard conditions. We also do a lot of work to help seniors (60+), including petitioning for protective orders against people alleged to have exploited, abandoned or physically/emotionally abused an elder. Additionally, we handle government benefit cases, requiring the involved agency to explain the reason for denying a client's benefits, reducing them, or charging an already impoverished person for overpayments.

**Frank:** Primarily, I take on housing cases, including working with code enforcement, and working with landlords to fix habitability issues our tenant clients face, such as mold, water damage and pest infestations. I also defend tenants in eviction proceedings.

**Lennon:** I primarily work on housing, government benefits and consumer finance cases. In the civil law services side of SLOLAF, there are opportunities to work on quite a variety of cases, so who knows what's next!

### WHAT WAS MOST SURPRISING TO YOU ABOUT WORKING FOR SLOLAF?

**Frank:** I would like to say how friendly, professional, genuinely kind and welcoming the staff was right from day one. However, I got that impression previously working with them as opposing counsel. I would have to say it was really eye opening to see from an insider's perspective just how much SLOLAF had recently expanded its services and the volume of people we are able to help. There is so much need out there, and it is so great to see SLOLAF meeting much more of that need in the span of just a few short years.

**Leesa:** While not really surprised, I am grateful to find that the people who work for SLOLAF are much how I envisioned—compassionate professionals, with hardworking, albeit relaxed, demeanors. For these reasons, it was surprisingly easy to get comfortable in this office.

**Lennon:** The professional and personal support and comradery among the entire SLOLAF team has been the best surprise of all.

**Sabrina:** I was most surprised about the office space! The office was much bigger than I expected, and the view from my office is great! Donna and Melodie (SLOLAF Executive Director and Legal Director of Family Law Services) did a great job making the Family Law Services office inviting and comfortable for our clients. Since our clients are survivors of traumatic events, it is critical that

they have a space where they feel comfortable when telling us their stories. I appreciate all of Donna and Melodie's hard work to create such a great space for them.

### IS THERE AN ACHIEVEMENT OR CONTRIBUTION THAT YOU ARE MOST PROUD OF?

**Lennon:** Almost 25 years ago, I set out cross-country to California to attend law school and obtain a law license. I was finally able to achieve those goals thanks to supportive family, friends and pets, SLO College of Law and SLOLAF. It is never too late!

**Frank:** I won an eviction trial earlier this year, which resulted in our client being able to keep the home he inherited from his mother. I was proud of that, because we really just stepped in a few days beforehand and were able to get witnesses and evidence prepared in a short timeframe to get a victory for our client.

Also, in another case, I worked with a landlord in getting a pest infestation resolved and a temporary remodel done for a tenant. The landlord had been non-responsive before we got involved. In the end, the landlord changed the carpet and exterminated the pests right before Christmas and before our client's granddaughter was born. The baby was going to be living in the apartment, and it was a good feeling to know the baby would have a safe and habitable place to come home to.

**Leesa:** In handling elder abuse cases, I've come across a few situations in which the elder is more

concerned for the well-being of the one who abused them rather than their own well-being. This is often the case when the respondent is the elder's child or sibling, and that person suffers from mental illness. In a recent case, I'm happy to say that we were able to convince the respondent to work with providers to address their mental health issues, to take prescribed medication, and because of that, they've been able to stay in the home, and their relationship with the client and other family members has improved.

**Sabrina:** I am proud to be part of SLOLAF and help those in need. I am thankful for the fact that I can bring survivors of domestic violence, sexual assault and stalking the justice they deserve.

#### HOW DO YOU BALANCE LIFE AND YOUR WORK AT SLOLAF?

**Leesa:** As a mother of two young kids, I am extremely grateful that SLOLAF encourages a good work-life balance. While we all work diligently throughout the week, we are discouraged from taking our work home unless it is truly necessary. Having this more level work-life balance prevents burnout and allows me to devote all of my energy to work while in the office or court, and further

allows me to give the necessary attention and energy to my family when I get home.

**Frank:** It really is quite easy to have a work-life balance at a great nonprofit organization like SLOLAF. Sometimes we have a lot of cases and many things going on, and there are times where I may need to work at night or on a weekend. However, for the most part, I can still enjoy my family and life outside of work, while at the same time getting the work done and obtaining much deserved justice for our clients.

**Lennon:** Hmm. Whether it is work or not work, I enjoy connecting with people, solving problems and leaving things better than I found them, if possible. I just try to be present and embrace the adventure or accept the challenge, regardless of the role or task I am taking on—that provides me with a sense of balance.

**Sabrina:** Coming from private practice, I am very used to handling a large caseload. I have developed strong time management and organizational skills that have helped me keep a good balance. I am fortunate to have wonderful co-workers that I can lean on if I become overwhelmed or just need some help.

#### ANYTHING ELSE WE SHOULD KNOW?

**Sabrina:** My husband and I are new to SLO County and we absolutely love it. We love the small-town vibe and the beautiful outdoors. We also love the community and find that everyone is very friendly and helpful. I am originally from Los Angeles and my entire family still resides there, so I appreciate that my hometown is not too far and I still get to enjoy the beautiful landscape of the Central Coast.

**Frank:** I'm looking forward to hitting up the new pump track at Barney Swartz Park in Paso with my skateboard more often this spring. I'd also like to say hi to my big boy, Max, and my beautiful wife, Carolina.

**Lennon:** Yes... SLOLAF's awesome annual fundraiser is coming up soon on April 27, and I'm looking forward to the Boogie Fever fun with our supportive community friends. The event will be over by the time you read this, but hopefully you were there—if not, please come next time—I promise you'll have a great time!

**Leesa:** I'm happy to be here! ■

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# Navigating Property Division in a Divorce

by Lindsey Harn

**D**ivorce on its own is emotionally and mentally challenging, but navigating property division makes it even more complex. Determining what to do with real property, such as a family home, adds stress and emotional turmoil for both parties. Having a well-structured roadmap for navigating these situations, therefore, is crucial to effectively getting through this process.

This article covers what to include in a divorce stipulation and what to omit to tackle some of the challenges that arise when confronted with the intricacies of property division.

## Omissions

To begin, there are a few things that should not be included: list price, price adjustments and time frames. Largely, these three areas require flexibility from all parties involved, so setting rigid limits could cause more problems than necessary.

**List Price** — The fair market value should be determined by a real estate agent, as it is a nuanced process that involves market evaluation. To avoid arguments over an outdated valuation, a real estate agent should make this determination post-evaluation to get an accurate and current assessment.

**Price Adjustments** — Settling fixed adjustments in a stipulation may not allow for the ever-changing and ever-fluctuating real estate market. Adjustments should be made based on market dynamics to ensure equitable and accurate division.

**Time Frames** — Allowing for adjustments in timing ensures a realistic and fair approach, which avoids unnecessary complications. Real estate transactions are based on myriad factors, including market conditions, location and property type.

For these reasons, do not set hard limits on when to be on the market, how long to be on the market before reviewing offers, how long before adjusting price, or how long the in-spouse can be in the property.

## Equity Buy-Out/Refinance

When one spouse is considering an equity buy-out or cash-out refinance during a divorce, careful planning and coordination are essential. Following are some recommendations for a smooth process.

- To ensure that the process is handled with expertise, work with a financial professional in the field of divorce. They will be able to handle the financial aspects of both the divorce and mortgage matters of the equity buyout or refinance with ease.
- Set a specified deadline for the spouse planning the buyout or refinance to complete the full application. It is recommended that this time frame be no more than 90 days. Having a specific deadline is crucial to beginning the process, as it sets a specific date when the sale can be forced. This prevents arguments and gives both spouses room to determine their next steps.

Set a timeline for executing the buyout or refinance, ideally no more than 180 days. This prevents prolonged financial uncertainties for both parties. It is especially considerate to the spouse who is not choosing the buyout or refinance option, as it means that there is an end date to the scenario that the other party put them in.

These recommendations ensure an equitable and efficient process for both spouses. They create stability and allow for a backup plan if things do not go as planned. The added clarity they promote will give the spouses some emotional and mental relief from the stress of their divorce. These can be combined with advice from a Certified Divorce Lending Professional for more support.





## Sale of Property

Selling the property is the other option, but this option also requires cooperation from both parties. The big focus when it comes to property sales is creating and maintaining an equitable process that keeps both spouses happy. Address the following areas of the division to remove some of the hurdles in the process.

- A great place to start is to contact a Certified Divorce Real Estate Expert. This person can and will assist with the process, especially since they have expertise in the crossover of real estate and divorce.
- The divorce stipulation should identify and clearly outline who is responsible for property repairs. Typically, repairs are a joint contribution, and the expenses are taken out of the sale proceeds, as this is fair.
- Identify how the sale proceeds will be distributed and divided between the two parties in the

divorce stipulation. Factor in outstanding mortgage payments, contributions to property-related expenses, etc. Making this decision early prevents arguments later on.

- Settle any outstanding debts, including repair costs, before distributing the proceeds. This encourages a clear and transparent distribution of funds and can prevent either party from feeling swindled out of their money.

- To pad the financial blow of moving for the in-spouse, consider a

partial distribution of cash before closing. If you go through with this option, establish a clear agreement on the details of this partial distribution in the stipulation, including the amount and timing. To make this decision, consider covering needs like a security deposit, storage expenses, and first and last month's rent.

- For the out-spouse, personal property should be picked up at a specified time. This should be coordinated well in advance of the listing so that the home staging process can happen effectively.

By establishing a clear plan in the stipulation for each of these concerns, both parties can avoid conflict and confusion. Alongside these larger concerns, there are smaller details that do not require as much debate between the spouses. When selling a previously shared asset, there are a few things that should be agreed upon in writing up front.

1. Installation of lockbox and For Sale sign.
2. Timely signing of listing and sales paperwork by all parties on title. This should happen within one business day.
3. Determination of open house and showing schedules by the listing agent. Unless otherwise worked out with the listing agent, occupants of the property should be prepared to make the house available seven days a week, from 10 a.m. to 7 p.m.
4. Guidelines for occupant(s) during showings and open houses. No occupants, family, friends or otherwise should be present during showings and open houses.
5. Accommodation of home stagers and photographers within a specified timeframe. This should happen within seven days of the list date, unless otherwise specified.
6. Compliance with advice from the home stager or listing agent for property maintenance. This typically means maintaining showing conditions.
7. Furnishing of two sets of keys to the listing agent at the time of signing the listing agreement.

## Making a plan for animals

In addition to addressing property matters, it is essential to consider the well being of any animals involved. A clear plan for pets should be included, and discussing these details in advance can prevent conflicts and ensure the continued welfare of beloved family pets.

A well-structured divorce stipulation can be a savior when it comes to adding excess turmoil to a divorce. A great place to start is to contact a Certified Divorce Real Estate Expert, a trained neutral. Collaboration and clear communication among the parties—the divorcing couple and the agent—will ensure a smooth process that means the focus of the divorce does not have to be selling the house. ■

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*Lindsey Harn is a Certified Divorce Real Estate Expert. Her contact information for real estate questions is (805) 441-7744 or [lindsey@lindseyharngroup.com](mailto:lindsey@lindseyharngroup.com).*

# ***Come Put Love Into Action— Join Us at One of Our 2024 Community Service Projects!***

**by Kara Stein-Conaway**

**Images courtesy of Kara Stein-Conaway**

*“Love cannot remain by itself — it has no meaning.  
Love has to be put into action, and that action is service.”  
—Mother Teresa*

**O**n February, 22, 2024, I was privileged to hear Attorney General Rob Bonta speak at an event hosted by the San Luis Obispo Unity Bar and the San Luis Obispo College of Law. His speech inspired me. When he concluded his remarks, I asked him what advice he would give to our local leaders so that we may inspire hope in the way that I felt he had done for me that afternoon.

Although I did not write down the exact words of his eloquent response to my question, essentially, I heard him say this:

1. Really listen to people when they talk to you.
2. Treat others with compassion.
3. Be of service to your community.

If we routinely practice truly listening, treating others with compassion and being of service to our communities, I believe we can cultivate hope and inspiration both for ourselves and for others.

In the spirit of being of service to our community, Sarah Matthews, the Stein-Conaway Law Firm P.C.’s case manager, and I envisioned a year where the Women Lawyers Association of San Luis Obispo County (WLA), and the San Luis Obispo County Bar Association (SLOCBA) members, and their family members and friends, have the opportunity to participate in four community service events in 2024 (one per quarter).

On Sunday March 10, we had our first quarter community service event at Jack’s Helping Hand’s Equestrian Park in Nipomo.

Jack’s Helping Hand provides programs that meet the specific challenges of children who have cancer, are medically fragile, or who have special needs in our community. The Nipomo Equestrian Park hosts the Little Riders program.

Little Riders is an adaptive horseback-riding program that is specifically designed for children, ages 4–21, with physical and cognitive disabilities. Equine programs such as this one can help improve balance, strength



*Volunteers from WLA and SLOCBA work on the 2024 first quarter community service project for Jack’s Helping Hand.*

and coordination, which result in increased mobility, independence and overall function. Classes take place in San Luis Obispo, led by Bonnie Burt, a Professional Association of Therapeutic Horsemanship (PATH) registered therapeutic riding instructor. Burt works with a team of trained volunteers in an encouraging setting where children can experience the benefits of working with horses.

When our group arrived, Bonnie Burt, from Jack's Helping Hand, greeted us and told us that she had two large projects that she hoped we would be able to help her with. One of the projects was to plant 10 redwood trees, and the other project was to create a wooden bridge that would be used to train horses and also to create a wooden directional sign.

My 11-year-old son, Jackson, and 7-year-old son, Cameron, enthusiastically volunteered to use the power drill to work on the wood-working projects. While our work crew started wood-working, I could see the tree crew members making quick work of planting the ten redwood trees—and they did a beautiful job. When they were done planting trees, Sheryl Wolcott and Greg Devitt even installed drip irrigation for the newly planted trees.

In addition to completing those big projects, members of our group also pulled weeds, cleaned horse water troughs, and we learned more about the amazing programs Jack's Helping Hand provides in the community.

I'm so grateful to each person who came out and volunteered with us. I love knowing that we contributed to making the equestrian ranch an even nicer place for those special little riders.



We hope you'll join us for our second-, third- and fourth-quarter events!

As soon as we've finalized the event dates, we will have an announcement in the SLO Bar's monthly e-Blast and will send out an email to those on the WLA email list. Please keep an eye out for those emails, which will also contain instructions for how to RSVP for the events. ■



### **Quarter 2 Project— Beach Cleanup**



### **Quarter 3 Project— Cal Poly Cat Program**



### **Quarter 4 Project— To be determined...**




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*Kara Stein-Conaway is the owner and managing attorney for the Stein-Conaway Law Firm, P.C., where she and attorney Jeff Stein help adults accused of crimes in SLO County protect themselves and their futures with their criminal defense practice: [www.steinconawaylaw.com](http://www.steinconawaylaw.com).*

# Starting a Company? Risk Avoidance Is Key!

by **Andrew Russell, JD**  
and **Emilie Elliott, JD**



*Image via Creative Commons*

**T**hinking of turning that great business idea into a start-up company? Regardless of the industry, potential size or financing needed, entrepreneurs on the precipice of starting a company should be thinking about one very important thing at the outset—risk avoidance.

Risk avoidance for business owners falls into four general categories: (1) protecting your personal assets; (2) structuring your business to achieve the most favorable tax treatment; (3) regulatory compliance; and (4) litigation avoidance.

One of the first legal considerations for a start-up is choosing the right legal structure. This decision will affect various aspects of your business, including business liability, personal liability, taxation and ownership.

Common structures for start-ups include sole proprietorships, partnerships, limited liability companies (LLCs), and corporations. Corporations are further broken down into S-Corporations and C-Corporations, each with their own requirements and characteristics. Each of the foregoing structures has its own advantages and disadvantages, so it's important to consult with a legal professional to determine the best fit for your specific circumstances, needs and desires.

Obtaining an Employer Identification Number (EIN) is also an important initial step. This will allow you to set up bank accounts and lines of credit under your business name, which will further

separate your personal assets and liabilities from your business assets and liabilities.

Once you decide on a legal structure that is right for your business, you will need to register that business with the Secretary of State. Depending on your entity type, your business will have regular reporting requirements with the Secretary of State to keep your information current with state authorities. Moreover, effective January 1, 2024, the Corporate Transparency Act (CTA) requires your business to report to the United States Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Another crucial piece to consider is intellectual property (IP) protection. Start-ups often rely heavily on IP, such as patents, trademarks, copyrights and trade

secrets. Often, IP is a fledgling business' only asset. It is essential to understand the different types of IP protection and the steps you can, and should, take to prevent others from infringing upon it.

This may involve applying for patent and/or trademark registrations, drafting and enforcing non-disclosure agreements (NDAs) when disclosing confidential information and trade secrets to third parties, having employees sign Confidential Information and Inventions Assignment Agreements (sometimes called CIAs), and implementing internal policies to safeguard trade secrets.

Employment law is another area that start-ups need to navigate carefully. As your company grows, you may hire employees, making it important to comply with labor laws and regulations, which is no small task. This includes understanding minimum wage requirements, overtime rules, anti-discrimination laws and employee benefits, to name a few.

Additionally, start-ups often rely on independent contractors or freelancers, and it's crucial to properly classify these workers, or make them employees, to avoid misclassification issues. It is very difficult in California right now to have legitimate independent contractors. You should always consult an attorney before deciding to classify workers as contractors. as misclassification can lead to a host of legal problems and significant damages and penalties.

When entering into contracts with other parties, which may include, without limitation, suppliers, customers and partners, it's important to have well-drafted contracts that clearly outline the rights and obligations of each party involved. This can help prevent disputes and provide legal protection in case of disagreements. Also, it's a good idea to proactively protect yourself by obtaining a business insurance policy. These should include general liability, errors and omissions and umbrella insurance, if appropriate, and may also include employment practices liability insurance (commonly referred to as EPLI).

Data privacy and security are also critical considerations for start-ups, especially in today's digital age. Depending on the nature of your business, you may collect and store sensitive customer data. It's important to comply with applicable data protection laws, such as the General Data Protection Regulation (GDPR) when selling goods and services to customers residing in the European Union as well as the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA), which apply to business selling to California residents.

Other countries and states have their own laws and requirements, which may differ, so it's a good idea to consult with legal counsel when considering your privacy obligations. Implementing robust data protection measures and having clear privacy

policies can help mitigate legal risks.

Securities laws may also be relevant for start-ups, particularly if they plan to raise capital through investors. The Securities and Exchange Commission (SEC) regulates the sale of securities, and start-ups must comply with various rules and regulations when seeking funding from investors. This may involve things such as filing a Form D exemption with the SEC, providing potential investors with disclosure documents and adhering to anti-fraud provisions.

Lastly, start-ups should be aware of any industry-specific regulations that may apply to their business. Certain industries, such as healthcare, finance, food services and the alcohol beverage industry have additional legal requirements and compliance obligations, some of which are extensive and onerous. It's important to research and understand these regulations to ensure your start-up operates within the boundaries of the law. Create a compliance plan to guide every aspect of your business and further safeguard your risk.

There is more than one way to set up a business. The legal considerations for a start-up company are multifaceted and complex, and that requires careful consideration. From choosing the right legal structure, to timely reporting with various state and federal agencies, to protecting intellectual property, complying with employment and securities laws, and addressing data

privacy concerns, start-ups must navigate a complex legal landscape. Seeking guidance from legal professionals and staying informed about relevant laws and regulations is crucial for the success and longevity of your start-up. ■

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# Lean In? ... or Lean Out? ... or Lean Toward You?

by Tara Jacobi

“Women rarely make one big decision to leave the workforce. Instead, they make a lot of small decisions along the way, making accommodations and sacrifices that they believe will be required to have a family. Of all the ways women hold themselves back, perhaps the most pervasive is that they leave before they leave,” according to Sheryl Sandberg, in 2013 the chief operating officer for Facebook, in her book entitled, *Lean In*.

Sandberg gives an example, “A law associate might decide not to shoot for partner because someday she hopes to have a family.” Sandberg stresses, “I would never recommend that every woman lean in regardless of circumstances. There have been times when I chose not to. In the summer of 2006, a tiny start-up called LinkedIn was looking for a CEO, and Reid Hoffman, LinkedIn’s founder, reached out to me. I thought it was a great opportunity and, after five years in the same position at Google, I was ready for a new challenge. But the timing was tricky. I was 37 years old and wanted to have a second child. I told Reid the truth: regrettably, I had to pass because I don’t think I could handle both a pregnancy and a new job.”

She explains, “For some women pregnancy does not slow them down at all but rather serves to focus them and provides a firm deadline to work toward. My childhood friend Elise Scheck looks back fondly on being pregnant, saying

she has never felt so productive; she not only worked her usual hours as an attorney but organized her house and put five years of photos into albums.

“For others, like me, pregnancy is very difficult, making it impossible to be as effective as normal. I tried writing emails while hovering over the toilet, but the situation didn’t lend itself to effective multi-tasking. Because I had already been through this with my first pregnancy, I knew what I was in for.”

Once while working at a firm with roughly 80 partners, with only two of who were women, one of them clued me in one day. It was the late 1990s, so fax machines ruled. She said in so many words, if you want to be a partner at a New York City law firm, be prepared to have the fax machine at the hospital while you are giving birth. After a

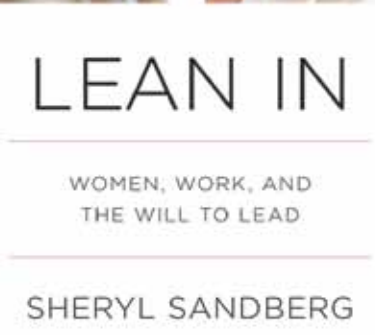
pause—and a blank stare—I wondered if she was going to tell me—just don’t have them at all. I gave her a nod and a half smile. Good to know. I thought.

Sandberg observes, “While it is hard to predict how an individual will react to becoming a parent, it is easy to predict society’s reaction. When a couple announces that they are having a baby, everyone says, ‘congratulations!’ to the man and ‘What are you planning to do about work?’ to the woman.”

So true.

Sandberg: “As Sharon Poczter, professor of economics at Cornell, explains, ‘The antiquated rhetoric of ‘having it all’ disregards the basis of every economic relationship, the idea of trade-offs. All of us are dealing with constrained optimization that is life, attempting to maximize our utility based on parameters like career, kids, relationships, etc., doing our best to allocate the resources of time. Due to the scarcity of this resource, therefore, none of us can ‘have it all,’ and those who claim to are most likely lying.’”

Sandberg uses Poczter to note the limitations of this resource. “Instead of pondering the question ‘Can we have it all?’ we should be asking the more practical question ‘Can we do it all?’ And again, the answer is no. Each of us makes choices constantly between work and family, exercising and relaxing, making time for others and taking time for ourselves. Being a parent means making adjustments, compromises and sacrifices every day.”



I see the time problem of not having enough to do all that you want to do compounded if you don't have the right support, which book critics were quick to add that Sandberg enjoyed in her life, but maybe took too much for granted. The time problem is even more compounded if you also have a perfection problem.

Sandberg does employ a chapter in *Lean In* entitled "Make Your Partner a Real Partner." Therefore, she does recognize the support issue, but that said, this is not automatically available to all. Some women are forced into a more supportive role and may never play the lead. Moreover, if you demand of yourself that things be done a certain way—for example, if clients be served with lots of personal attention or that correspondence be

written flawlessly in terms of cutting-edge content, flow, grammar, voice, clarity and impact—well, this all equates to either a tall order or setting yourself up for failure.

Interestingly enough, Sandberg address the perfection problem saying, "Another one of my favorite posters at Facebook declares in big red letters, 'Done is better than perfect.' I have tried to embrace this motto and let go of the unattainable standards. Aiming for perfection causes frustration at best and paralysis at worst."

I see that she, too, has this problem. And yes, I agree, you can find yourself living in a constant state of frustration.

Sandberg states, "I agree completely with the advice offered by Nora Ephron in her 1996 Wellesley Commencement speech when

she addressed the issue of women having both a career and family. Ephron insisted, 'It will be a little messy, but embrace the mess. It will be complicated, but rejoice in the complications. It will not be anything like what you think it will be like, but surprises are good for you. And don't be frightened, you can always change your mind. I know, I've had four careers and three husbands.'"

Well, I don't know if surprises are always good. Yet, I do know now, for my generation as opposed to say my grandmother's generation, it's more acceptable than ever to change careers and spouses. Maybe good news. Although some might not like this. Maybe that one career you thought you always wanted is missing something that

*Continued on page 25*

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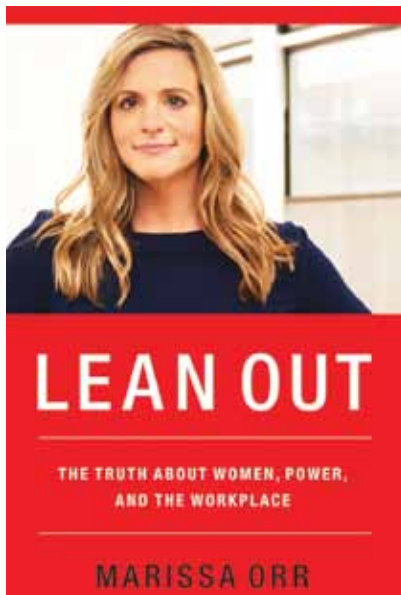
## Lean In? ... continued

you deeply care about. Maybe that first husband is not supportive. I don't know, but Ephron, like others, continued onward although not in a straight line. I do know you can change your priorities. Sometimes life is giving you more open doors in one direction than in another direction. Sometimes if you listen, you might find yourself making changes.

Sandberg moves to a conclusion and states, "If I had to embrace a definition of success, it would be that success is making the best choices we can...and accepting them. Journalist Mary Curtis suggested in *The Washington Post* that the best advice anyone can offer 'is for women and men to drop the guilt trip, even as the minutes tick away. The secret is there is no secret—just doing the best you can with what you've got.'"

Well, it is hard not to have regrets. It is part of life. You will make some bad choices, but one hopes these will be fewer and farther between than the good choices. Agreeing with Sandberg is easy because she hits on a truth for many women of our shared experiences with balancing work and family life. I get it. Lean in; don't leave before you leave. Understood. Yet, does she see the reality of the whole painting? What about the workplace itself? How does our working environment play a role?

Marissa Orr, author of 2019's *Lean Out*, says, "Only 4.8 percent of *Fortune* 500 companies are run by women. We've tried to increase that number by trying to change everyone in corporate America, but mostly by trying to change women. We've told them to lean in, go for the promotion, be more assertive, more ambitious, more confident and less fearful. We've tried



training people to overcome their cognitive biases and prejudices. We've tried to get organizations on board by showing them that diversity improves bottom line."

Orr writes, "During my women's leadership presentations at Google, I'd share Ariely's chart with the audience and ask everyone to imag-

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ine that they're the head of a committee tasked with increasing the number of organ donors across the European Union. With only six months to solve the problem and a budget of \$1 million, I'd ask people to share some approaches they might take. The most common suggestions were along the lines of education, increasing the information available (pamphlets, videos, etc.), incentive programs, advertising campaigns, marketing outreach, and so forth. There was

*Continued on page 26*

## Lean In? ... continued

also a general consensus that most solutions would exceed a \$1 million budget and take longer than six months, but that's always expected with large projects that have seemingly unrealistic constraints.

"Then, I'd tell everyone that the hypothetical situation wasn't exactly imaginary. Years ago, the European Union formed a committee to increase the number of organ donors; they were given six months and a \$1 million budget to complete the project. It took them only seven days to set their plan in motion and only three months before the rate of organ donors jumped an astounding 80 percent. Oh, and the budget? They only used \$10,000 (1 percent of the \$1 million allotted).

"How did they manage such a Herculean feat? The answer is shockingly mundane: they changed the form at the DMV. When the committee looked at the countries with the fewest organ donors, they found that their DMV forms asked people to check a box if they wanted to become an organ donor. People weren't checking the box, so they weren't becoming organ donors. European counties with high donation rates had a slightly different form, which said something along the lines of, 'check the box if you *don't* want to be an organ donor' (emphasis mine). People weren't checking the box, so they were becoming organ donors."

Orr's thinking lays the foundation for *Lean Out*.

Another example Orr uses is about the Oakland A's from Michael Lewis' book, *Moneyball: The Art of Winning an Unfair Game*. In it she explains, "Billy Bean didn't go from underdog to champion by trying to change his players' behavior. He didn't try to increase their ambition, encourage their

self-esteem, or use top players as role models they should emulate. He did it by employing a system—a system that better assessed player talent and didn't relay on a mental bias and proxies such as foot speed. When it comes to solving the gender gap, we've tried to change behavior directly instead of changing broken aspects of the system. It's akin to trying to convince every person at the DMV to become an organ donor instead of simply redesigning the form."

How insightful. Another piece of the puzzle. Maybe there is another way to solve this. Could we dare to redesign the box? Yet, not only does Orr think about more than women's actions, she also questions the standard.

Orr probes, "If working longer hours or managing more people or playing more office politics reduces the quality of our lives in the long run, how can we call this a win? Because men have more than we do? More what? At some point, we have to ask ourselves: 'What exactly are we winning, and who are we winning against?'"

"Women earning more money aren't the only way to close the wage gap. It can also be closed by men choosing more flexible jobs, so they can pitch in more at home. ...But few people ever look at it from that angle.... Instead, people declare, 'Men are in the ideal position in society, so we'll measure ourselves against them.'"

Orr continues, "As you may remember from school, Abraham Maslow's hierarchy of needs tells us that once human beings fulfill their basic survival needs (food, clothing, shelter), the most significant force driving behavior is our emotional needs.

"A large part of our happiness and well-being is determined by how we're meeting and fulfilling our emotional needs.

"Real empowerment is about knowing who you are and how to fulfill your unique needs and desires," states Orr.

Finally, Orr concludes, "Lean Out doesn't mean quit your job or check out mentally. It means leaning out of anyone else's story of who you should be and what a successful career looks like. It is a rejection of dogma and rhetoric. It's about declining the invitation to model your career after people you don't want to become."

Orr doesn't accept only the standard rewards of the system. She sees beyond the focus of behaviors too. Unique. Both Sandberg and Orr might benefit by focusing slightly more on this undertone found within their analysis and writing that is trying to examine the circumstances of women in the workplace. Maybe the next book title should be *Lean Toward You*.

Yes, there is only so much time we each have in a day. Yes, you may want to do it all and then some. Yes, you may want it all done well. Yes, you have to consider your family's needs at the time. It is a sacrifice to be a parent or to take care of an aging parent. Yes, you have to consider your level of support at that time, too. Yes, you're working within the constraints of your environment. Yes, there is more than one way to solve the problem. Yes, it should be your definition of success and no other person's definition of success. Yes, meeting your emotional needs or working toward your happy place matters.

Might this simply mean: Lean toward you? ■

# Conservatorship or Power of Attorney? The Answer Is: It Depends

by Victor Herrera, JD

A number of high-profile celebrities have recently sought a conservatorship for a family member including Jay Leno, for his wife Mavis, and Cher for her son, Elijah Blue Allman, claiming they are unable to adequately manage their affairs or make proper medical decisions. Football star Michael Oher, whose life story inspired the movie *The Blind Side*, last year successfully sought legal relief from a conservatorship that had been in place since he was a teen. And who doesn't remember the contentious 13-year conservatorship that Britney Spears experienced at the hands of her family?

## What is a Conservatorship?

A conservatorship is a legal arrangement where a person, known as the conservator, is appointed by the court to make certain decisions on behalf of another individual. This person, referred to as the conservatee, is generally unable to make decisions for themselves or properly care for themselves. The name of this process may vary depending on which state you are in. For example, in California, a conservatorship is only for adults. Other states may call it a guardianship.

A conservatorship is typically sought when the conservatee lacks the mental or physical capacity to manage their own affairs, and it is designed for individuals suffering from a mental or physical disability. This can occur due to dementia; Alzheimer's Disease; someone who has suffered a serious injury or illness (i.e. stroke); and/or there are other serious mental health and safety concerns.

## Several Types of Conservatorships

Conservatorships can take many forms. Each can be used to obtain a different result, depending on the person being conserved. These types include the following.

- **Of the Estate:** A conservatorship of the estate provides the conservator full authority over the conservatee's finances held outside of a trust. The conservatee retains physical autonomy, but they are unable to access their finances.

- **Of the Person:** A conservatorship of the person is when the conservator has decision-making capability over the conservatee's health and life. Everything related to physical health including how they receive medical care is included, excluding psychotropic medication.
- **LPS:** In California, an LPS conservatorship is designed to provide the conservatee care for mental health disorders and allows the conservator to force the conservatee to take psychotropic medication. These must be renewed yearly.
- **Limited:** Some specific aspects of the conservatee's life may be limited, and the powers granted to the conservator. In California, a limited conservatorship is for a developmentally disabled adult.

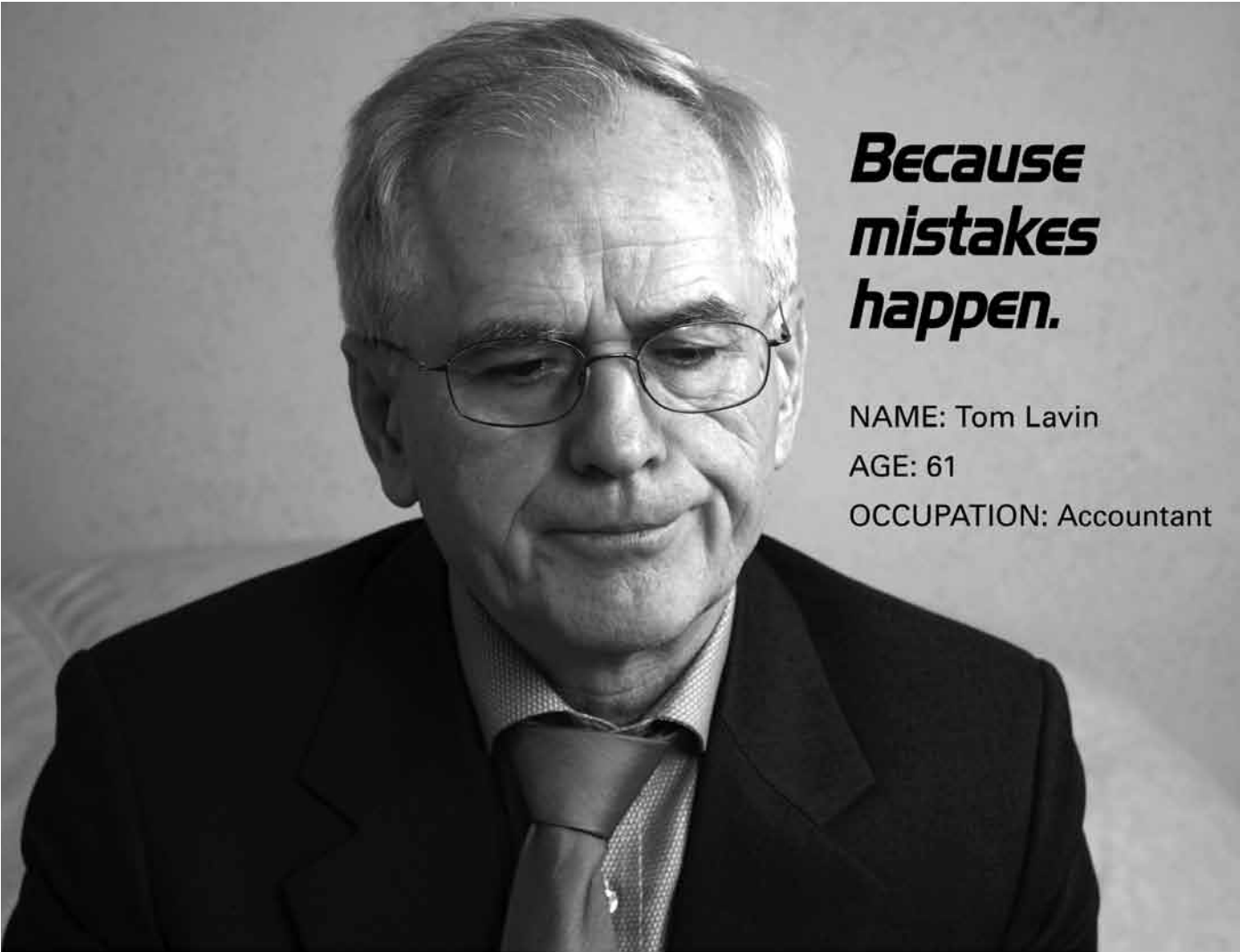
## Conservatorship vs. Power of Attorney vs. a Trust

A **Power of Attorney (POA)** can accomplish many of the same things as a conservatorship. A POA gives the appointed individual the authority to make legally binding decisions. Unlike a conservatorship, it is directed by the person who executed the Power of Attorney. Power of Attorney is a valuable tool for an individual who is preparing for an anticipated incapacitation or just wants to be prepared for any unexpected problems.

An **Advanced Health Care Directive (AHCD)** can accomplish many of the same things as a conservatorship. The AHCD gives the appointed individual the authority to make health care decisions on behalf of the principal. An AHCD can help avoid the stress and cost of going to court to get authority to make medical decisions on behalf of a loved one.

A **Trust**, on the other hand, is a legal document made during a person's lifetime. In a Trust, a person chooses a trustee who has responsibility for managing the assets within the Trust, always for the benefit of the beneficiaries (usually the trust creator). The trustee can be known to the person chosen or it can be a third-party. Trusts can be both

*Continued on page 28*



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# Conservatorship or POA? continued

revocable and irrevocable. Special Needs Trusts holds assets for someone with a disability, and funds are expended on behalf of the individual when directed by the court on their behalf.

A conservatorship can do many of these things, but require court involvement and supervision of those involved. This causes an increase in costs, time and, to a certain extent, reduces the flexibility of the actors as they may need to seek court approval for their actions. In many situations, a Power of Attorney and Advanced Health Care arrangement, or a Trust, may serve the individual better than a conservatorship. What works best should be based on individual circumstances.

## Planning Ahead is the Key

By planning ahead and establishing a Power of Attorney, an Advanced Health Care Directive and Trust, an individual can ensure that their financial, legal, and personal matters are taken care of by someone they trust. One of the main reasons to create an estate plan is to avoid potential disputes and conflicts among family members or loved ones. Without a clear plan in place, disagreements may arise regarding who should make health care decisions or handle finances, which may result in the parties going to court. By proactively addressing this issue, individuals can reduce the chances of such conflicts occurring.

Additionally, creating an Estate Plan allows individuals to have a say in who will be responsible for making decisions on their behalf. This ensures that their wishes and preferences are taken into account, rather than leaving these important decisions solely in the hands of the court. By selecting a trusted individual to act as their trustee or agent under a power of attorney or advanced health care, individuals can have peace of mind knowing that their best interests will be protected.

Additionally, creating an Estate Plan can help individuals maintain control over their financial affairs. Without an Estate Plan in place, the court may appoint a stranger or a professional fiduciary to manage the person's assets or make health care decisions for them. This can result in additional costs and potentially lead to decisions that may not align with the individual's wishes. ■



### SUMMER CHALLENGE—

As you roam SLO county and elsewhere this summer, look for what captures your sense of wonder/imagination/humor. Please take a high-resolution photo (lots of pixels) and send to [tarajacobi@icloud.com](mailto:tarajacobi@icloud.com) for possible inclusion in the *Bar Bulletin*.

Thank you!

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*Carmel & Naccasha Partner Victor Herrera practices in the firm's Wills, Trusts and Estate Planning practice. He may be contacted at [vherrera@carnaclaw.com](mailto:vherrera@carnaclaw.com) or (805) 546-8785 for questions regarding developing or revising a will, trust or estate plan.*

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Contributors are encouraged to limit the length of their submitted articles to 2,500 words or less, unless the article can be published in two parts in successive issues. Lengthy lists of footnotes or citations should be incorporated into the the article.

Editorial contributions to the *Bar Bulletin* must be submitted electronically **ONLY** in Microsoft Word format directly to the 2023 Editor at [tarajacobi@icloud.com](mailto:tarajacobi@icloud.com)

**To ensure consideration for inclusion in the next scheduled edition, your articles, photographs and art, advertisements and ad payments must be received by the deadines listed in the Publications Schedule at right.**

The *Bar Bulletin* reserves the right to reject or edit any contributions. By submitting contributions for publication, contributors consent under this policy to the editing of their work, the publication of their work and the posting of their work online.

The San Luis Obispo County Bar Association does not pay contributors for their submissions.

Opinions expressed in the *Bar Bulletin* do not necessarily reflect those of the San Luis Obispo County Bar Association or its editorial staff. The *Bar Bulletin* does not constitute legal advice or a legal resource and must not be used or relied upon as a substitute for legal counsel that may be required from an attorney.

## Photograph/Artwork Policy

Your submission of photographs/artwork to the *Bar Bulletin* authorizes their publication and posting online. All photographs must be submitted in jpg or tif format with a resolution of not less than 300 dpi via email or, for large files, via WeTransfer. Please include the photographer's name and that you have permission to use the photograph.

## Publication Schedule

The *Bar Bulletin* is published six times per year. **The deadlines for accepting articles, photographs/art, advertisements and ad payments follow.**

| ISSUE               | DEADLINE |
|---------------------|----------|
| • January–February  | 11/25    |
| • March–April       | 1/25     |
| • May–June          | 3/25     |
| • July–August       | 5/25     |
| • September–October | 7/25     |
| • November–December | 9/25     |

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All advertisements in the *Bar Bulletin* must be submitted in jpg, tif or pdf format with a resolution of not less than 300 dpi.

Flyers or announcements for the opening, closing or moving of law practices, upcoming MCLE programs or other events put on or sponsored by organizations other than the San Luis Obispo County Bar Association are considered advertisements, and therefore they are subject to this policy and to all applicable advertising rates.

Information on advertisement sizes and rates can be found online at [www.slobar.org](http://www.slobar.org). All advertisements should be prepared prior to publication.

**Contact Kerrin Adams at (805) 541-5930** to reserve advertising space and arrange payment.

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