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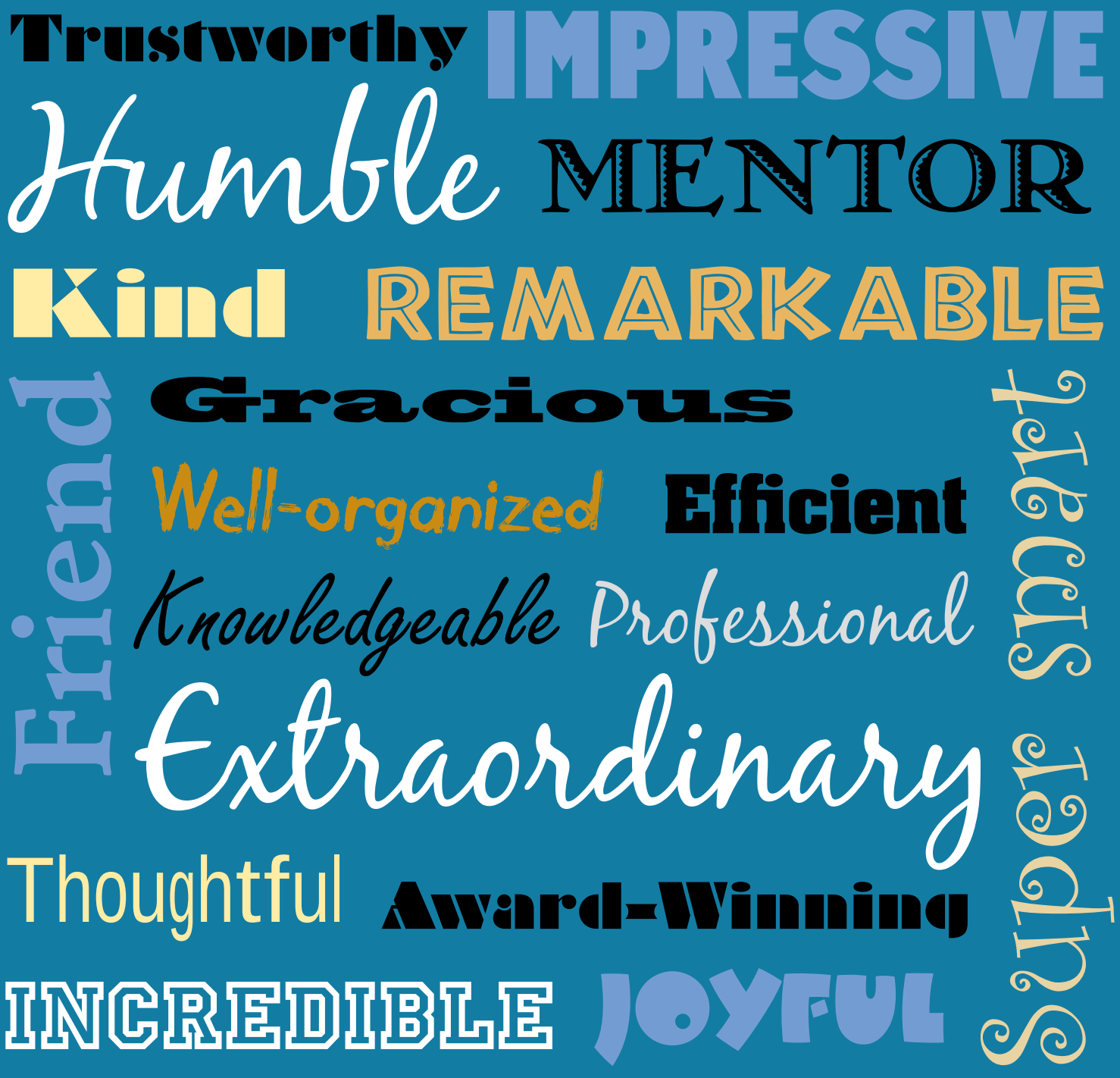

Farewell Words to Lida Sideris

U.S. Immigration Options for Ukraine Nationals / Modest Means Spotlight: Beatriz Pimentel Flores / What to Know When Your Client is Hit With a Labor Board Complaint / Antipsychotic Treatment / Fair Housing: Fixing a Mess of Our Own Making

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Santa Barbara County Bar Association

The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.

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Articles

Sections

On the Cover

A Fond Farewell: Words About Lida Sideris

U.S. Immigration Options for Ukraine Nationals

By Andrea M. Anaya

The Russian invasion of Ukraine has left many Ukrainian nationals displaced from their homes and seeking refuge in other countries. The international community has taken steps to provide shelter and services to millions of refugees from the Ukraine. Some European countries have provided permanent refugee status to large numbers of Ukrainians. The United States government expressed support for the displaced people of Ukraine. Among its actionable items, the United States has implemented certain immigration policies to help welcome Ukrainian nationals seeking shelter.

Across the political spectrum in the United States, there are those who argue the response has been very limited in providing services and shelter, while others say current programs are far too generous. The purpose of this article is to provide an overview of current services available and to offer guidance in maneuvering a very complex area of law.

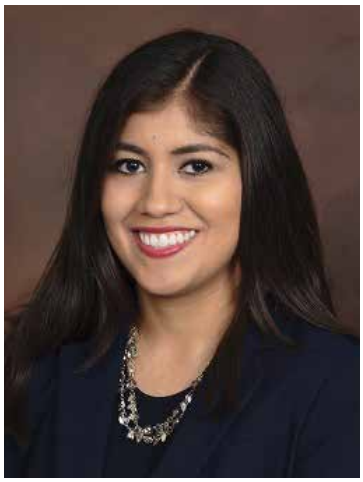
Options for Ukraine Nationals Inside the United States

Temporary Protected Status

On March 3, 2022, Secretary of Homeland Security Alejandro Mayorkas designated Ukraine for Temporary Protected Status (TPS) for 18 months. The TPS program provides temporary immigration status to nationals of certain countries when conditions in their home country are dangerous and unsafe due to an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions. Some countries that are currently designated for TPS are: Burma, El Salvador, Haiti, Honduras, Somalia, Sudan, Syria, Venezuela.

A Ukrainian national may be eligible for TPS if they meet certain requirements:

- Proof of Ukrainian nationality or a person without nationality who last habitually resided in Ukraine;
- Have continuously resided in the United States since March 1, 2022 (Individuals who enter the United States after March 1, 2022 are not eligible.);
- Cannot have a conviction for any felony or two or more misdemeanors; and
- Cannot be inadmissible under immigration rules for past persecution, inciting terrorist activity, or other national security reasons.



Andrea M. Anaya

The TPS designation for Ukraine will go into effect on the publication date in the Federal Register. The Federal Register notice will provide instructions for applying for TPS and employment authorization. For now, Ukrainian nationals inside the U.S. hoping to apply for TPS must wait for further direction from the Department of Homeland Security. They can expect to wait several months before they are issued employment authorization to work in the United States.

Extension of Authorized Stays or Change of Status

On March 4, 2022, U.S. Citizenship and Immigration Services (USCIS) announced flexibility and accommodations for Ukrainian nationals inside the United States. Individuals who entered on a nonimmigrant visa may request an extension or a change of status and be granted some flexibility by the USCIS. The USCIS may excuse a delay in filing the extension or change of status (such as from B visitor visa to F student visa) before expiration of their authorized period of admission if the delay was due to extraordinary circumstances beyond the applicant's control.

Expedited Processing of Certain Immigration Benefits

Ukrainian students on F-1 visas inside the United States who are experiencing severe economic hardship can submit a request for employment authorization to the USCIS to work off campus. Ukrainian nationals in the United States may also request expedited adjudication of certain pending petitions or applications, such as employment authorization and advance parole.

Asylum

Ukrainian nationals inside the United States who are not able to return to Ukraine because they have been persecuted or fear that they will be persecuted on account of their

nationality, race, religion, membership in a particular social group, or political opinion in their home country may be eligible to request asylum. Individuals who are eligible for asylum can file USCIS Form I-589 with the USCIS within one year of arrival. An individual who has been in the United States for many years that did not previously file for asylum may still be eligible to request asylum due to changed circumstances in Ukraine.

Options for Ukraine Nationals Outside of the United States:

COVID-19 Pre-Departure Text Exception

The Centers for Disease Control and Prevention (CDC) announced that individuals who were physically present in Ukraine as of February 10, 2022, will not be required to provide proof of a negative COVID-19 test result prior to boarding a flight to the U.S. This exception expired on April 30, 2022.

Expedited Processing of Immigrant Visas

The United States has closed all consular operations in Ukraine. The U.S. Consulate General in Frankfurt is now the designated processing post for all Ukrainian immigrant visa applications (except adoption cases). All adoption cases are being handled at the U.S. Embassy in Warsaw. Ukrainian nationals are not required to have a visa to enter Germany or Poland. Applicants with a scheduled appointment in Frankfurt or Warsaw may request to have their case transferred to another post.

A U.S. citizen or lawful permanent resident may file an immigrant visa petition on Form I-130 to immigrate a Ukrainian family member, if that family member falls into one of these categories:

- Immediate family member: spouse of a U.S. citizen; unmarried child under 21 years of age of a U.S. citizen; parents of a U.S. citizen (if the U.S. citizen is 21 years of age and older); or
- Family preference visa categories: unmarried sons and daughters (21 years of age and older) of U.S. citizens; spouses and children (unmarried and under 21 years of age) of lawful permanent residents: unmarried sons and daughters (21 years of age and older) of lawful permanent residents; married sons and daughters of U.S. citizens; and brothers and sisters of U.S. citizens (if the U.S. citizen is 21 years of age and older).

Familial relationships outside these categories are not eligible for a family-based immigrant visa petition. Immigrant visa petitions cannot be filed for grandparents, uncles/aunts, cousins, nieces/nephews, mother-in-laws, etc.

If an immigrant visa petition has been filed with the USCIS for a Ukrainian immediate family member, the petitioning family member may request expedited processing of the petition with the USCIS. Once approved, a request can be made with the National Visa Center to request an expedited interview date at the U.S. Consulate General in Frankfurt.

U.S. citizens who are physically overseas with Ukrainian immediate family members may file an immigrant visa petition directly at the nearest U.S. Embassy or Consulate that processes immigrant visas. A request to expedite the request should be included with the application.

Nonimmigrant Tourist or Business Visas

Nonimmigrant B-1/B-2 visas are for temporary stays in the United States, not for permanent or long-term stays. To be granted a tourist visa, the applicant is required to provide sufficient documentation to demonstrate their intent to leave the U.S. after a defined period of time to return to their residence abroad. This can be a difficult burden to overcome given the ongoing conflict in Ukraine. Ukrainian applicants are finding that it is much harder than expected to receive a tourist visa for travel to the United States.

Asylum

Initially, Ukrainian nationals who presented themselves at the southern border of the United States to request asylum were turned away at the border.[1] They were denied entry to the U.S. based on a controversial order issued in March 2020 by the CDC that gives border patrol officers authority to expel individuals arriving at the border who would normally be detained in a congregate setting under Title 42.[2] Title 42 is a public health order designed to prevent public health crises based on the introduction of a communicable disease into the U.S. This policy has resulted in the expulsion of over 1.2 million individuals to Mexico, without the ability to request asylum.

On March 11, 2022, the Department of Homeland Security issued a directive to immigration officials to determine on a case-by-case basis to exempt Ukrainian nationals at land border ports of entry from Title 42. Since then, numerous Ukrainian nationals have been admitted at land borders to pursue asylum applications in the U.S.

On April 1, 2022, the Biden administration announced that Title 42 would be lifted effective May 23, 2022.

Refugee

On March 24, 2022, President Biden announced plans to welcome up to 100,000 Ukrainians through a full range of legal pathways, including the U.S. Refugee Admissions Program, which leads to permanent residence. Refugee cases abroad are processed by the United Nations Refugee Agency (UNHCR). Ukrainian nationals abroad interested in seeking refugee status in the United States need to contact UNHCR for refugee processing. The UNHCR has created a page with resources for Ukrainian Nationals to seek refugee: https://help.unhcr.org/usa/information-for-people-affected-by-the-ukraine-situation/

Humanitarian Parole

Parole is a program run by the Department of Homeland Security that allows an individual who may be inadmissible or ineligible for admission to enter the United States temporarily due to an urgent humanitarian reason or significant public benefit. To request parole, applicants must file Form I-131, Application for Travel Document, and Form I-134, Affidavit of Support, with the USCIS. The request can be expedited due to the ongoing crisis in Ukraine. Proof of nationality must be provided with the request, along with documentation to establish an urgent humanitarian reason. If the parole application is granted the applicant will be granted a travel document to allow them to enter the United States.

For many Ukrainians these options are still too cumbersome and long. Many fled their home without a valid passport or identity documents which halts the processing of any application. The absence of required documents coupled with the already significant backlogs in many United States consulates due to closures from COVID can result in a long wait time for applicants. The processing time may not be swift enough to enter the United States lawfully under the current humanitarian crisis. ■

Andrea M. Anaya is a Junior Partner with Kingston, Martinez & Hogan. She practices immigration law, specializing in family-based immigration, deportation/removal defense, crimmigration, post-conviction relief, deferred action, and federal immigration litigation. She is licensed by the State Bar of California and is a member of the American Immigration Lawyers Association.

Life, Liberty, and Justice for All Modest Means Spotlight: Beatriz Pimentel Flores

Introduction by Michelle E. Roberson

I met Beatriz almost twenty years ago when I got my first job out of college and was still deciding if I wanted to go to law school. We have kept in contact over the years and I jumped at the opportunity of interviewing her over lunch when I saw she was on the Modest Means panel. I had a lot of questions, the first being why a private practitioner with over twenty years of experience would volunteer low bono. Then, of course knowing she had four kids, the question was: how?

But these questions are really surface level and do not get to the root of a person and what drives them. For that, we have to go back to the beginning, the people that inspired us, the words we heard that influenced us and as I sat chatting with Beatriz, catching up, and hearing stories old and new, she said, "I remember at school, putting my hand over my heart saying the Pledge of Allegiance and really believing when I said 'life, liberty, and justice for all.' It meant something to me."

The interesting thing was, when she said this, she said it in passing, she was not talking about Modest Means. She was talking about the belief of justice in general and believing in our judicial system. But, as you will see below, this is exactly why she devotes her time to the program. She believes that all should have a right to representation which leads to life, liberty, and justice regardless of economic or educational status.

Beatriz Pimentel Flores

When people ask me what influenced me to become a lawyer, I tend to change the question to, "Who influenced me to become a lawyer?" It was my parents. Both my mom and dad are my role models. They expected all four of their children to do their best in whatever we did– from making our beds to doing our homework, to looking someone in the eye and saying what we meant and meaning what we said.

I am both a first generation American and a Native American, made in Mexico and assembled in the United States. I was born of Mexican and Native parents who left their home country and headed north. My older brother was not born in a hospital. He was born in a two room adobe house with tamped down dirt floors that my grandmother would polish to a beautiful sheen. Our home did not have running water. Before going to work, my father had to wake up before dawn and walk a quarter mile to the local spigot to get buckets of clean water for my mom to wash clothes, cook and bathe. My mom is a strong and determined woman who has always set goals, and by sheer determination and grit, achieved them. She knew that she loved her country but given her and my father's socioeconomic circumstances and lack of education, that there would not be a way for her son and me, who was about to be born, to have a better life. She wanted better for us. She made up her mind: the family would go north. My mom convinced my dad that our family would be better off in the U.S.

My mother grew up hearing her father speak of the benefits and detriments of the U.S. My Native American grandfather loved his country but not the way he was treated by his countrymen. My grandfather left the U.S. as a young man because of the insidious and brutal discrimination. Although our family had lived in this country since time immemorial, when he was born, he was not even considered a U.S. citizen. My grandfather, originally from Oklahoma, left his country and settled in Mexico where he looked like the locals and felt more at home. Although he was a true American, he was not considered a U.S. Citizen. When black Americans won citizenship with the 14th Amendment in 1868, our government specifically interpreted the law so it didn't apply to Natives. The majority sentiment of the time was expressed by Michigan Senator Jacob Howard who said,"I am not yet prepared to pass a sweeping act of naturalization by which all the Indian savages, wild or tame, belonging to a tribal relation, are to become my fellow-citizens and go to the bills and vote with me." Native Americans would not be considered "Citizens of the United States," until 1924, after my grandfather was born. Somehow it gives me great pleasure to be a Native who has not missed voting in local, State and Federal elections since I was old enough to vote! (Ok, full disclosure, I have missed a vote twice that I can recall.)

But I digress…my parents came back to the U.S. just in

time for me to be born. I was home, and what a happy home it was. As a young child, I had no idea that living in the projects and standing in line to borrow toys from my Head Start classroom on Friday afternoons to be returned on Monday morning meant that I was poor. I did not know I was poor. I just knew I was happy because I had a papi who played football in the alley behind the projects with my sister and brother, who ran miles behind my little red bike that he bought me at a garage sale as I learned to pedal on my own, and a mother who made me beautiful dresses and who sang beautiful songs in Spanish while she cooked, cleaned, and cared for her family. Although neither of my parents had the privilege of being formally educated, they both read a lot, kept abreast of local and global news and always had an opinion that they could back up with a quote or cite from a book they read. They keenly knew that an education was invaluable. I grew up with my papi reminding me, "mija, tu educación no te pertenece, le pertenece a todos los que no tuvimos el privilegio y la oportunidad del estudio" (daughter, your education does not belong to you, it belongs to all of us who did not have the privilege and opportunity to be educated).

My parents read the history and folktales of my ancestors to me while also insisting that we know our new country's history. As a kid, I enjoyed reading every book I could about Abraham Lincoln. I admired his grit, his determination and his common sense. Reading about Abraham Lincoln and his love of learning and education planted a seed in my mind; if he helped a lot of people with education, then maybe I could as well. I remember telling my dad that I was going to be a lawyer, "like Abe Lincoln." His response: "Claro que si hija." (Of course, my girl). My dad helped me believe I could do anything I wanted and my mom helped me plan how to get there.

My childhood experiences brightly color the memories that I carry with me to adulthood. Looking back, they were not all rosy. I remember my parents struggling economically. I heard English speaking people make fun of my mom's accent and the way another student made fun of my dad's huaraches at one of my parent teacher conferences. I remember shopping at the swap meet for knock off designer jeans and hoping that other kids would not know. Through the hardships, my parents remained steadfast in their ways. They were always so dignified and proud. They never wavered in their determination to educate us, both morally and educationally.

As a parent, I remember the lessons I learned as a child. I know that the values we instill in our children leave lifelong imprints. When my second oldest boy was 7-years-old, he broke an expensive crystal vase that he was using "as a trumpet." To this day, he tells the story as, "momma was proud of me because I told her I broke the vase and didn't try to pin it on the baby *and* I didn't even get in trouble for breaking it." He was right. I was extremely proud of him for telling me the truth about the broken vase. I was angry that he thought that using the vase as a trumpet was a good idea, but then again, he was 7-year-old. I kept my anger in check. It was an excellent lesson for the lad. He has grown up to be an honest, decent human being who is a truth teller. But really, I loved that vase. It was so pretty. I have never been able to find a replacement. Truth telling is important to me. Sometimes the truth is not pretty or convenient, but it is always the truth and, "the truth shall set you free." Yes, my parents were also very religious and I sometimes quote the Bible without meaning to do so.

Because of my parents: kind, hardworking, dignified people, I am a Modest Means attorney. I believe that everyone has the right to representation. Not everyone has the same background and experiences. If I learned anything from my parents it is that we are obligated, as humans, to be more understanding, less judgmental and more inclusive. Being a Modest Means attorney allows me to put my life experience and my educational experience to work for folks who would otherwise not be able to afford private counsel because of a lack of resources or not knowing that they do have the legal right to assert their rights. As a Modest Means attorney, I have the privilege of not only advocating for my clients but also of explaining both the legislative and the judicial processes.

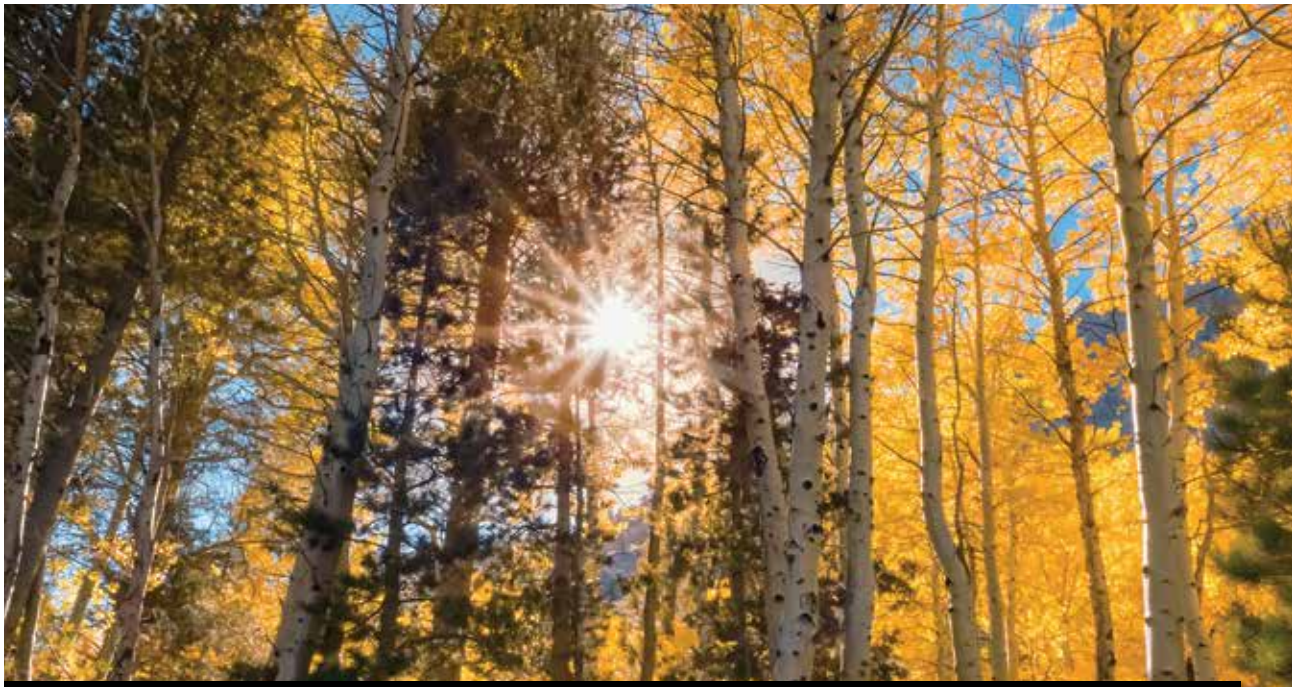
I still feel a sense of pride when I explain that in the United States, as in Galatians 3:28, it does not matter if someone is rich or poor, black or white, male or female; what matters is the truth and one's willingness and determination to be heard. Our legal system is impartial and our judges are fair, unbiased and required to follow the law. Yes, I sometimes have to say that some laws are not fair. Fortunately, I can proudly explain that advocacy and justice go hand-in-hand and at the end of the day, if our laws are not just, we can and must change the laws.

I have found that most of my Modest Means clients have a genuine respect for our legal system and the willingness to be actively involved in their cases. It helps that every time we walk (or Zoom in) through the courthouse doors, my clients are treated with dignity, respect, and the opportunity to be heard by everyone involved, from the bailiff to the judge. This is why I believe in our justice system. As long as I have been an attorney, I have seen that our legal system works. It doesn't mean that my client always wins or prevails, but it does mean that I fiercely advocate for my clients and I know that irrespective of socioeconomic status, skin color, religion or language spoken, they are all treated with dignity and respect.

My friend Michelle Roberson asked my opinion about what I thought is an obstacle to justice. So much divides us and pits us one against another, be it skin color, socioeconomic status, religion, country of origin, etc. The equalizer is access to education and a strong, impartial, moral justice system. Being heard in a dignified and respectful manner is paramount to resolving disputes, determining guilt or innocence, establishing consequences and being held to answer for actions taken or not taken.

An obstacle to justice is lack of access to the legal system. We need to ensure that people are not staying away from the courthouse because of the fear that their immigration status precludes them from asserting legal rights, or that not having money to hire an attorney shuts the justice door in your face, or that not speaking English or speaking it with an accent will make their voice heard any less clearly. I also believe that justice begins before we need to go to the courthouse. It begins with all children having access to a fair and equal education so that our children have opportunities to dream big dreams and the educational tools to let them attain their dreams and follow their passions.

Practicing law is wonderful. I truly enjoy what I do. However, we all need a break. In my downtime, I enjoy being physically active. I have tried yoga and I *know* that I have no business being still. I am in awe of people who can be so still and contemplative. I am not very coordinated and could never figure out the poses. I prefer to go to the beach and surf with my boys and daughter. Even if it is flat and there is not a wave in sight and none of my children have time to hang with their madre, I will still paddle out and lay on my board and just enjoy being out on the water. As my kids have gotten older, I've found it challenging to get us all together to go on backpacking or surfing trips, so I've started to take up activities on my own. I just started taking Aikido. So fun and so painful at the same time! Aikido takes a lot of coordination and balance so it is a challenge, but I'm sticking with it. I am enjoying Aikido because it is all about finding balance, being fluid, knowing the technique and always being present. Kung Fu Panda had it right when he said, and I'm probably misquoting, "the past is the past, the future is unknown and the present is a gift and that's why it's called 'the present.'" I am doing my best to enjoy life, although it is always changing in unexpected ways. I am doing my best to enjoy "the present." ■



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See You Around, Lida Sideris
Farewell Words to Lida

Introduction

By: Michelle E. Roberson

Lida is incredibly humble and would rather we not spotlight her as she maximizes her final days as our Executive Director preparing for a smooth transition. She has reminded me several times that she is not going anywhere and she would love to still be in touch.

We certainly are fortunate for that, as she is right: this is not goodbye.

However, this also does not mean we cannot thank her for incredible contributions to our legal community as we bid her "see you around."

We will also not allow her to minimize her contributions and leadership as she brushes off our gratitude as just part of her job. She spearheaded the Modest Means program, the Lawyer Referral Service, and she is the welcome committee for new lawyers in town. She has been the heartbeat of our legal community and we thank her deeply for her many years of service, not just to our Association, but our entire community.

Kirk Ah Tye: I personally know of Lida's remarkable service to our Bar Association. She has been an institutional resource in her efficiency, endearing charm, and total know-how. She has been the continuity to make the Bar effective every day for all of us. Lida's one of the few people in life's encounters who is trustworthy, mature, and gracious– impressive traits I deeply appreciate. I've avoided the past tense so that this doesn't sound like an obituary: My thanks, Lida, and best wishes on your ongoing adventures.

Judge Thomas Anderle: As a one-time Naval officer, I start by saying that Lida ran a tight ship. She seemed to be on top of everything, organized, available, and kept our Bar Association going in every way. And I have read all of her books! She is a hard act to follow.

Marilyn Metzner, Secretary to Judge Anderle & Judge Sterne: I have spent several years of delightful friendship with Lida. We worked together from time to time on offerings for the Quibbler. We visited frequently about her books, all of which I have purchased as gifts for my fellow Judges and a friend. She has chickens and my daughter in Arizona has chickens, all of whom have personalities and much to share. She has dogs, we have two lovely Aussies; my daughter in Arizona has several dogs. We share about the animals. Lida loves to write; I love to read. She is smart, kind, generous, and thoughtful. She is well-organized and loves our Bar Association and the many lovely folks it has brought her into contact with. We will never replace all that our dear Lida has been to us. The Bar will no longer have Lida at the helm, but thankfully we will maintain our warm friendship. Her family will have the stability and security of her presence and commitment. Blessings to Lida, et al.

Naomi R. Dewey, Esq.: I am sure I am not alone when I say Lida has transformed our Bar Association. Under her guidance she helped reorganize the Lawyer Referral Service, shore up the Fee Arbitration Program and take care of a host of other projects that often fly under the radar. She made my year as President so much easier, and was a joy to work with. She brings a host of extra skills to the table – copy

editing *Santa Barbara Lawyer* is one of her many talents. Plus, how many Bar Associations can say they have been lucky enough to have an award-winning author as their Executive Director?

Judge George Eskin: Lida's service to the Santa Barbara County Bar Association has been extraordinary, and I will miss the professionalism she demonstrated in her prompt responses to all my inquiries for many years. She will be missed, and I hope she will enjoy quality time with her family, because she has earned it.

Lynn E. Goebel: I was the President of the Bar Association and a part of the hiring team for the Executive Director position back in 2009/2010 timeframe when Lida came in for an interview. Our search for a new ED was not, in my opinion, producing any positive candidates, despite our efforts. I cut my holiday travels short to return to Santa Barbara specifically to join my colleagues interviewing Lida.

I think she can recount the weariness on our faces when she walked into the conference room at 15 West Carrillo Street. She immediately sparked hope for us, and when she accepted the position, I knew the Bar Association would be in great hands.

She's a self-starter and a doer who has done such wonderful things during her time with the Bar. And she hasn't—and likely won't—take any of the credit for where the organization is today, including, most importantly, the Lawyer Referral Service. I fully but reluctantly support her decision to leave the Executive Director position. She's become a trusted friend and for that, and for so many other things, I am eternally grateful.

Bruce Hogan: Several years ago, the SB County Bar Association Bar-B-Q was held at the Natural History Museum. In the flier, Lida suggested that attorneys might like to bring their families to the festivities. I brought my wife Claudia along and asked Lida if I could bring my pre-teen twins, Avery and Mamie, whose birthday, as I mentioned to Lida, happened to be on that same day, June 22. She, of course, said yes, please do. After the usual excellent drinks and food, Lida brought out a birthday cake for all to share, and directed the entire gathering to sing Happy Birthday to the twins, who were both shocked and thrilled to have so many important adults singing to them.

This is but one example of Lida's graciousness and good will. We all wish her well.

Betty L. Jeppesen: Lida Sideris has been the ultimate Executive Director of the Santa Barbara County Bar. Always ready with a smile and a "can do" approach to any situation, she was talented, super smart, kind and thoughtful throughout her entire tenure. It was always a pleasure to see her at events. She made sure that everything was in order; ran on-time and was exactly what the Bar members were looking for. Our loss is the publishing world's gain as she will hopefully continue to pen her wonderful novels. We will miss you Lida!

Erin Parks: Dear Lida: Although I wish you the very best as you move on to a new chapter in your life of friends, family, and writing, your departure from the Santa Barbara County Bar Association will leave a huge void that will be difficult to fill. There is no way to replace your years of experience, your rapport with the County Bar and its Board, and the local community. Thank you for your unique and innovative methods of dealing with the challenges, especially through the pandemic. It is an honor to have known you, to have been mentored by you while Editor at the Santa Barbara Lawyer, and as a member of the Board. Your guidance has been invaluable and your demeanor a delight. There are no words I can use to adequately express my gratitude. I hope you know how much I appreciate you. Best wishes, Erin R. Parks

Kathleen Baushke: It has been both an honor and a pleasure, Lida, to work with you each month during your tenure with the SBCBA, producing *Santa Barbara Lawyer.* We have journeyed together through the world of semicolons, em dashes and en dashes. Do we capitalize this word? Shouldn't there be a hyphen here? Can you fit in this last minute (paying) advertisement? You spelled that judge's name incorrectly, Kathleen....

Every year we began a new adventure with a new attorney-editoral team. We never knew exactly what the magazine would be like, but it was always great—thanks to your guidance and professionalism.

Now a new adventure begins for you! I promise in the future to always proofread my work and not leave out any advertisers. I will truly miss you. ■

What to Know When Your Client is Hit With a Labor Board Complaint

By Alex Craigie[1]

Few California employers, large or small, will go forever without facing a claim before the Labor Board, also known as the Labor Commissioner. In theory, this system is intended to provide a venue in which both aggrieved employees and their employers can work in concert with the agency, and without the involvement of costly attorneys, to resolve disputes over wage-hour issues. In reality, while the scheme may work as intended on behalf of aggrieved workers, it can catch inexperienced and unrepresented employers off-guard, occasionally with disastrous results.

This article sheds light on this system, with the goal being to provide lawyers who do not regularly practice employment litigation with the minimum understanding needed to counsel clients on what to expect, where it might be necessary to involve a knowledgeable employment law specialist, and how to avoid a catastrophic result.

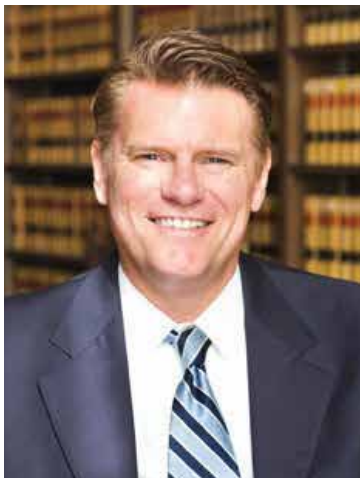
The Division of Labor Standards Enforcement

First some background: the employment relationship in California is governed by the California Department of Industrial Relations ("DIR").[2] The branch of this agency that addresses wage and hour practices is the DLSE or Labor Commissioner. The following is a brief list of the issues adjudicated by the Labor Commissioner:

- Failure to pay minimum wage
- Failure to pay overtime premium wages
- Failure to reimburse business expenses
- Failure to timely pay final wages
- Failure to prove meal and rest breaks
- Failure to provide proper wage statements

Initiating a Claim

An employee files a claim by completing a formal Complaint[3] in-person, by mail, or by email. Each DLSE office is staffed by Deputy Labor Commissioners who will, if needed, assist employees in completing their Complaint. It is important to note that an aggrieved employee may elect, instead of bringing their claim before the Labor Commissioner, to file a civil lawsuit in California state court for wage-hour violations.[4] As mentioned, the purpose of DLSE procedure was to provide the employer and employee an efficient way to resolve small wage and hour disputes without requiring either party to need counsel.



Alex Craigie

Assuming the DLSE accepts the Complaint as valid on its face, it will advise the employer of the claim in a notice served on all parties entitled, "Claim and Conference." This sets forth, in rough terms, the employee's claims and schedules a Conciliatory Conference, generally a month to 45 days out.

Employer's Options

The employer can end the entire process here by depositing the full amount sought in the Complaint with the DLSE. Alternatively, employers can file an Answer to the Complaint,[5] but the choice not to formally answer does not result in a default, and employers should not feel the need to hire a lawyer to write an Answer.[6] While the Deputy Labor Commissioners will help employees prepare their Complaint, it appears less common [if at all] that they will assist employers with preparing their Answer.

The Conciliatory Conference

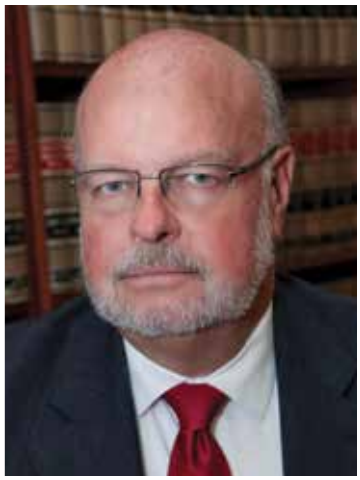
Prior to COVID-19, the conciliatory conferences were held in-person at the local DLSE office. Since the pandemic, conferences have been held by telephone, which I hope is not permanent as they are far less effective. The conferences are conducted by a Deputy Labor Commissioner and typically last between 30 minutes and 2 hours. Both parties may, but are not required, to have counsel present on their behalf. Counsel may also represent an employer *in absentia*.

In fairness to the DLSE, depending on their level of experience, and appreciating that they are not trained mediators, the Deputy Labor Commissioners generally work hard to broker a deal. This is an important opportunity for an employee genuinely owed wages to reach a compromise as statistics suggest that less than 20% of workers who do not settle but pursue and obtain a judgment

Continued on page 22

Antipsychotic Treatment

By Robert M. Sanger[1]



Robert M. Sanger

Drugs have a big impact on criminal practice. In the last *Criminal Justice* column, we discussed the new influx of illicit drugs that give rise to criminal prosecutions not only for possession and sales but for all the property and other crimes associated with drug use. In this column we will address another side of drugs that also has a big impact on criminal practice: the failure of people who suffer from psychosis to take medications that are properly prescribed to help alleviate their symptoms.

One of the first things that clinicians and criminal justice professionals hear when an individual gets into trouble due to bizarre behavior is that the person is "off their meds." Anecdotally, it is a significant problem, and just published research gives us a better insight into the problem and, possibly, how to help deal with it.

The Problem

People who suffer from psychotic disorders often benefit from medication. Note the term "often." This is not the place to discuss in detail the anti-psychiatric and anti-medication movement but it warrants brief mention. Dr. Thomas Szasz in an essay[2] and then a popular book[3] took a leading place in the anti-psychiatrist movement, even though the movement went far beyond the point that he was making. Szasz was reacting to the over medication, psychosurgeries, electro-shock therapies and institutionalization of people in the 1950's. His work had even more appeal in the late 1960's at a time of concern about government intrusion into individual autonomy. His thesis was that the diagnosis of mental illness was a judgmental response to "problems in living." What appeared to be psychotic delusions were forms of communication. As such, he maintained they were not properly subject to medical, biological and institutional corrections.

Of course, there have been leaps in medical ethics over the last 50 years leading to the abandonment of many repressive treatments for people diagnosed with mental health issues. Medical science has also made significant advances in understanding the causes as well as developing medical treatments for mental health issues, including psychoses, which are both efficient and respect the patient's autonomy. Nevertheless, vigilance in dealing with individual liberties is always warranted. Thus, it is fundamental to the proper implementation of therapies, including prescribing medications, that the effect on the patient's overall quality of life be considered and there be appropriate monitoring for adverse effects.

When properly prescribed and monitored, antipsychotic medications do help reduce the delusional thoughts and overly destructive behavior that can occur when a condition like schizophrenia and schizoaffective disorder are left untreated.[4] Hence, professionals in mental health and criminal justice regularly see people who are in the court system who go "off their meds" and get in trouble. Properly prescribed "meds"—that is, antipsychotic medications—are essential to the individual's well-being in addition to that of their family and community. On the criminal side, when an individual starts to decompensate due to nonadherence to antipsychotic medication, self-destructive behavior, and other behavior that may be directly harmful to the individual or others, often occurs.

It is also important not to stigmatize people with mental health issues. People with such issues may not be significantly more prone to violent or antisocial encounters than the general population. This is found true particularly when studies are controlled for substance abuse and socioeconomic factors.[5] However, the fact is to the benefit of people with psychoses that they generally can be treated with medication to reduce the chance that they may have such encounters due to their condition. Importantly, people who get off their medication often self-medicate with illicit substances that make them more prone to encounters with law enforcement. Thus, for the purpose of this article, we will assume that the problem is to help people stay on properly prescribed antipsychotic medication.

The Study

If researchers want data on medical issues, they can go to Europe where, country by country, detailed medical information has been collected for decades. This is due

to centralized single payer medicine. The government is not only aware of what is going on but is responsible for a large part of it. Furthermore, there is not much fight over proprietary commercial information or, for that matter, excessive concerns over privacy particularly as it pertains to aggregate data. Hence, we know so much about the intergenerational epigenetic effects of trauma because the Dutch kept detailed medical records on everyone in their country from the 1940's to the present.[6] Similarly, we now know more about what factors relate to nonadherence to antipsychotic treatment because the Finnish have kept meticulous medical records and a comprehensive prescription database.

Five researchers have just published their research on nonadherence to antipsychotic treatment after studying the records of 29,956 patients diagnosed with schizophrenia or schizoaffective disorder.[7] The data were collected from the electronic prescription records maintained in nationwide Finnish databases. They included all persons diagnosed with schizophrenia or schizoaffective disorder so identified in the Hospital Discharge register using the international codes similar to the DSM-V codes used in the United States.[8] The subjects were all persons from Finland who were diagnosed from 1972 to 2014, who were still alive on January 1, 2015 and were on that date less than 65 years of age. The researchers then went to the Finnish electronic prescription database that includes first time prescriptions and renewals for outpatient care. They compared the antipsychotic medications to other medications like antidiabetics, antihypertensives, and statins.

The researchers looked at covariates all measured as of January 1, 2015. These included age, gender, and time since first schizophrenia diagnosis. They also identified concomitant medications and, historically diagnosed comorbid conditions including cardiovascular disease, diabetes, asthma/COPD, previous suicide attempts, and substance use disorders. All of this was submitted to a statistical analysis that involved consideration of sociodemographic and clinical factors in a regression analysis, along with other sophisticated statistical refinements and adjustments. They also compared their data and analysis to the results of a meta-analysis of previous studies. The results of this study are sophisticated and detailed.

The Study's Conclusions

Suffice it to say for our purposes, there are some salient conclusions. First, about a third of patients with schizophrenia or schizoaffective disorder (hereinafter considered together under the term schizophrenia) demonstrate primary nonadherence to antipsychotic medication. Schizophrenic patients were less adherent during the chronic period particularly when less than 25 years of age and recently diagnosed. Females were more reluctant than males. However, overall, schizophrenic patients demonstrated lower primary nonadherence to somatic medications compared to their antipsychotic medications – in other words, they were more likely to take medication for physical conditions while not taking their psychiatric medications.

In addition, the study found that, of several clinical factors related to nonadherence, "The present study found that one in five patients with schizophrenia had a diagnosed substance abuse comorbidity, also related to primary nonadherence to antipsychotic treatment." In other words, about 20% of people initially going off their meds are likely to have also been illicit drug users. This was both from drug use contributing to a lack of insight in the first place and from the fact that patients often use illicit drugs to self-medicate in an attempt to alleviate their general dissatisfaction with life. Finally, the study found that attempted suicide rates were associated with nonadherence as was overall poor health due to lifestyle choices as well as failure to take other somatic medications.

The study also confirmed what clinicians related anecdotally about Long Acting Injectable (LAI) treatment. Compared to oral treatments, "usage of LAIs relates to lower mortality and rehospitalization risk in schizophrenia, thereby supporting LAIs in clinical practice." This is important because, particularly in supervised settings, injectables are easier to manage and to ensure that they are taken. This study confirms that the overall clinical effect of LAIs is positive for the patient and not merely a matter of convenience to the health care provider.[9]

Conclusion

For mental health and criminal justice professionals, helping people with schizophrenia cope with the world and not get in trouble is a constant challenge. This study confirms what many know on a case-by-case basis. People with schizophrenia often do not take their meds and it has bad effects for them and others. Illicit drug use is often concomitant with the original diagnosis of schizophrenia. After being prescribed antipsychotic medications, people often self-medicate with illicit drugs to improve their satisfaction with life which, in turn, can lead to discontinuing the prescribed medications. Importantly, while antipsychotics alone or in combination with other drugs must be carefully prescribed and monitored, the use of Long Acting Injectables is an important option to consider. ■

Endnotes

1 Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 48 years. Mr. Sanger is a Fellow of the American Academy of Forensic

Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization.

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2 Thomas S. Szasz, "The Myth of Mental Illness," 15 American Psychologist 113-118 (1960).

3 Thomas S. Szasz, The Myth of Mental Illness: Foundations of a Theory of Personal Conduct (1961).

4 Diego Novick, Josep Maria Haro, David Suarez, Victor Perez, Ralf W. Dittmann, Peter M. Haddad, "Predictors and clinical consequences of non-adherence with antipsychotic medication in the outpatient treatment of schizophrenia," 176 Psychiatry Research 109-113 (2010) ["relapse, hospitalization, and attempted suicide were significantly more likely to occur in patients who were non-adherent."] See also, Ron M. Herings, Joëlle A Erkens, "Increased suicide attempt rate among patients interrupting use of atypical antipsychotics," 12 Pharmacoepidemiology Drug Safety 423–424 (2003).

5 Heather Stuart, "Violence and mental illness: an overview," 2 World Psychiatry 121-124 (2003) ("Mental disorders are neither necessary, nor sufficient causes of violence. The major determinants of violence continue to be socio-demographic and socio-economic factors such as being young, male, and of lower socio-economic status." "substance abuse appears to be a major determinant of violence and this is true whether it occurs in the context of a concurrent mental illness or not.")

6 Tessa Roseboom et al., "The Dutch Famine and Its Long-Term Consequences for Adult Health," 82 Early Human Dev. 485, 486–87 (2006) (detailing the unique nature of the Dutch famine as affording an unprecedented opportunity to study the effects of starvation due, in part, to meticulous records); for an overview, see, Carl Zimmer, "The Famine Ended 70 Years Ago, but Dutch Genes Still Bear Scars," New York Times (January 31, 2018).

7 Johannes Lieslehto, Jari Tiihonen, Markku Lähteenvuo, Antti Tanskanen, Heidi Taipale, "Primary Nonadherence to Antipsychotic Treatment Among Persons with Schizophrenia," Schizophrenia Bulletin (University of Maryland, prepublication March 7, 2022, https://doi.org/10.1093/schbul/sbac014).

8 International Classification of Diseases (version 10), codes F20 and F25 and codes 295 (and subsections).

9 The study also includes interesting information about specific medications and combinations of medications.

Craigie, *continued from page 17*

through the DLSE ever see their money.[7]

Most management-side employment lawyers would likely agree that this is also the employer's best opportunity to control the outcome and save itself significant money and grief by resolving the claim at the conference stage, even if it disagrees with much of the claim and/or the employee is overreaching.

As with any settlement conference or mediation, the opportunity exists to continue negotiations later if unsuccessful at the conference. The Deputy Labor Commissioner may be willing to assist in this effort. Like any underfunded state agency, the DLSE is looking to clear its docket and settlement is the most expedient way to do this. Presumably, most Deputy Labor Commissioners are also aware of the dismal statistics regarding employee post-judgment collections.

Berman Hearing

If the employer does not appear at the conference (it is optional) or the employee's claim does not resolve, the DLSE will set an evidentiary hearing in approximately 90 days, termed a "Berman" hearing, after Howard Berman, the member of the California Assembly who instituted the procedure. At this point, employers should understand that they may not receive a fair hearing. In other words, some due process protections go out the window, and the end result may be surprising or even astonishing.

To begin with, the hearing officer is not a judge, or even a lawyer, but another Deputy Labor Commissioner. So, an employer—represented or otherwise—is facing a judge who is also opposing counsel. And while the Deputy surely has ample knowledge of California's spider web of wage and hour laws, he or she generally has limited, if any, understanding of the rules of evidence. It turns out this isn't important, since the hearings are conducted *without regard to the rules of evidence*, making some hearings a chaotic free-for-all.[8] The parties may subpoena witnesses and documents using an application which must be filed with the DLSE at least 15 days before the hearing.[9]

In addition to the lack of adherence to the rules of evidence, the length of the hearing and the apportionment of time to the parties to present "evidence" is at the discretion of the hearing officer and can also be problematic, leading to perceived unfairness. The Deputy might set aside as much as a full morning or afternoon to hear the testimony and receive "evidence." However, some employers and their counsel may feel this is inadequate to fairly present their proofs, particularly on such complicated legal questions as independent contractor or exempt employee misclassification and resulting damages. Those of us who regularly practice before the DLSE also perceive that hearing officers generally bend over backwards to provide aggrieved employees more time to present their claims and evidence than is provided to employers to present their defense.

Order, Decision or Award & Trial De Novo

The law requires, within 15 days after the hearing, that the hearing officer file and serve the parties with an Order, Decision, or Award ("ODA"), which must include a summary of the hearing and the reasons for the decision and must advise the parties of their right to appeal. As a practical matter, it can take much longer for the ODA.

Employers and their counsel should brace themselves to be potentially shocked by the award. Naturally, an employer might expect to be required to compensate a worker for wages owed or penalties justifiably incurred, as well as interest accrued prior to the hearing. However, in addition to wages and injuries, the DLSE will also tack on "liquidated damages" equal to the unpaid wages and interest,[10] essentially doubling the award, plus "waiting time penalties" which is calculated by taking the employee's daily rate of pay and multiplying it by 30.[11] After the stacking of interest, penalties and liquidated damages, a six-figure DLSE award arising from a modest wage or meal/rest break dispute is by no means unusual.

Either party may appeal the award to the California Superior Court,[12] but the window to do this is tight, just 10 days. Upon appeal, the parties will receive a trial *de novo* before a state court judge who knows and, presumably, will apply the rules of evidence and hopefully allow the parties sufficient time to adequately present their evidence. A losing employer appealing an award will be disappointed, or worse, to learn that it must post a bond or make a cash deposit equal to the DLSE award.

To put this into perspective, imagine a small employer facing an award of $150,000 or more after an abbreviated one-sided hearing in which it received just one hour to present testimony and evidence, while its former employee had two or more hours to present his or her case with the guidance of the hearing officer. In order to get a fair trial *de novo*, the employer must file an appeal within 10 days and post a bond or cash deposit for the full $150,000. This outcome has caused more than one client to contemplate shuttering its business.

Should either side feel it did not get a fair trial *de novo* in state court, the normal rights to further appeal exist. However, it is important to note that, if the employer appealed the DLSE award, the DLSE may provide free legal

representation to the employee at the trial *de novo* (and subsequent appeals). The same is not true for an employer if the employee appeals the DLSE award.

As with appeals generally, the prevailing party on a trial *de novo* following a DLSE award is entitled to recover its costs and, for a prevailing employee, its reasonable attorney's fees under the fee-shifting provisions of most wage-hour statutes. However, the definition of prevailing party varies. An employee is "successful" on appeal if he or she recovers an amount greater than $0. Consequently, an employer is successful on appeal only if nothing is awarded at the *de novo* trial.[13] Therefore, even if the employer who appeals succeeds in having an award reduced significantly, the employer still must pay the employee's reasonable attorneys' fees and costs.

Conclusion

Hopefully this drives home the importance of evaluating and, if reasonably possible, resolving DLSE claims at the earliest stage. Employers must understand that a Berman hearing is an "evidentiary" hearing in name only. The rules of evidence aren't applied, and the odds are stacked against employers in myriad other ways. Disputes that might merit a fair fight in the court system will not be fairly adjudicated before the Labor Commissioner, and an appeal to trial *de novo* will likely be prohibitively expensive given the bond requirement. Therefore, practitioners counseling employers in these circumstances should be sensitive to the potential for costly and unfair results. ■

ENDNOTES

1 Mr. Craigie is the Labor and Employment Section Head for the Santa Barbara County Bar Association. A recognized thought leader and proven courtroom lawyer, he helps businesses throughout California prevent, manage and resolve employment disputes in a rapid and cost-efficient manner. Reach him at: Alex@CraigieLawFirm.com.

2 While the DIR and DLSE enforce California state employment law, employers must also comply with federal employment law. In the event the federal and state laws overlap on an issue, employers are held to the stricter standard. Often this is California state law, particularly regarding wage-hour issues.

3 DLSE Form 1.

4 Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1115.

5 Form WCA 63.

6 But see, Labor Code, § 98, subd. (e) ["Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose."]. Arguably, if the DLSE procedure is meant to offer both parties an alternative to hiring counsel, and since Deputy Labor Commissioners do not typically assist employers with drafting their Answer, holding an employer to this standard seems manifestly unfair.

7 Cho, Koonse & Mischel, "Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers," https://www.nelp.org/wp-content/uploads/2015/03/Hollow-Victories-Unpaid-Wages-Report.pdf, at 2 [2008-2011 study showed only 17 percent of workers who prevailed in wage claims before the DLSE and received a judgment recovered any money].

8 Cal. Code Regs., tit. 8, § 13508 ["Proceedings need not be conducted according to technical rules relating to evidence and witnesses."].

9 Cal. Code Regs., tit. 8, § 13506

10 Cal. Labor Code §1194.2.

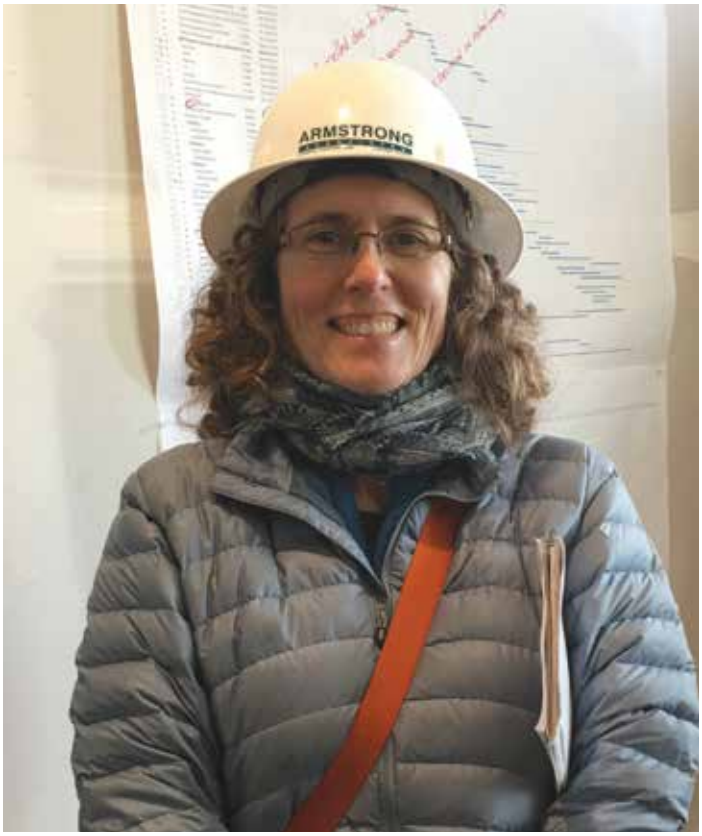
11 Cal. Labor Code §203.

12 Using DLSE Form 537.

13 Cal. Labor Code §98.2(c).

Fair Housing: Fixing a Mess of Our Own Making - Part One

By Janet M. Eastman, CPM®



Janet M. Eastman, CPM®

Why do we have Fair Housing, and where did it come from? We may all be familiar with the protected classes designated by fair housing laws. In fact, they may be so familiar that we just take them for granted. It is easy to forget how hard fought these basic anti-discrimination laws were, as well as the extensive time it took for them to truly take hold. April was Fair Housing month; here we take a look at that long and difficult history. What follows is a very brief and cursory overview of some of the reasons behind the need for fair housing legislation, and the laws that have taken shape, which are so vital to rental housing practices today.

The Root of the Problem

When a Dutch trading ship brought 20 Africans to the British colony of Jamestown, Virginia, as indentured servants in 1619, the shameful practice of what would become slavery took hold in the new world and didn't end until 1863, when millions of enslaved African Americans were freed by the *Emancipation Proclamation* during the Civil War. In the intervening 250 years, an untold number of Africans were brought to the U.S. to help build the economic foundations that have made the country what it is today. As enslaved people, they endured unspeakable treatment and were deprived of the most basic human rights.

President Lincoln's Executive Order on January 1, 1863, proclaiming the freedom of enslaved people in the ten states that were in rebellion, was actually only the beginning of the end of practice of slavery. The War ended on April 9, 1865, and in December of that year, the Thirteenth Amendment of the United States Constitution was adopted, outlawing slavery in the U.S. by stating that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Black Codes

After the war, Southern states passed laws in 1865 and 1866, called The Black Codes, to restrict the freedom of newly freed enslaved African Americans and compel them to work in a labor economy based on low wages or debt. The Codes were essentially replacements for slave codes, adopted even by some Northern states to discourage free blacks from moving there. They denied equal political rights, including the right to vote, the right to public education, and the right to equal treatment under the law.

Since the colonial period, such laws, whose main purpose was to preserve slavery in slave societies, had existed to limit the rights of free blacks, prohibiting them from voting, bearing arms, gathering in groups for worship, and learning to read and write. These statutes, including the slave codes, established the "chattel" status of enslaved persons and regulated their lives and ability to move freely.

The Civil Rights Act of 1866

The Civil Rights Act of 1866 was enacted as a means to enforce the Thirteenth Amendment. The clause of the Act relating to housing discrimination—that can now be found at Title 42 U.S. Code § 1982 (Property rights of citizens)—reads: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold, and convey real and personal property."

The century that followed this first civil rights act is full

of heartbreak, broken promises and not only an inability on the part of the government to end inequality, but its active participation in and promotion of racial segregation. Black Codes and Jim Crow laws designed to restrict the rights and liberties of African Americans perpetuated their separate status in the South. Urban crowding and competition with waves of European immigrants for industrial work resulted in a less explicit atmosphere of racial segregation and discrimination in the northern cities, to which millions of African Americans fled. Violent protests against racial discrimination began as early as 1919, and the struggle for racial equality proved to be the country's greatest challenge.

Reconstruction's Failure

Following the Civil War, Reconstruction of the South (1865-1877) attempted to rebuild the cities that had been decimated during the war and protect the lives of the now four million freed enslaved people. It was a job well-begun but never fully successful, and violent push back in the South prevented its success. Inequality prevailed with outright flaunting of the law by Southern forces seeking to reassert themselves after the war. Despite efforts to provide protection to Southern blacks and Republicans, the party to which Abraham Lincoln and Ulysses Grant belonged and which championed the end of slavery, outlaws such as the Ku Klux Klan and other pseudo militias terrorized and murdered them without consequence.

Civil Rights Act of 1875

This last of the major Reconstruction statutes, enacted on March 1, 1875, sought to guarantee African Americans equal treatment in public transportation and public accommodations and service on juries. The Act affirmed the "equality of all men before the law" and prohibited racial discrimination in public places and facilities such as restaurants and public transportation. The law also made it a crime to facilitate the denial of such accommodations or services on the basis of color, race, or "previous condition of servitude." All lawsuits arising under the Civil Rights Act were to be tried in federal courts, rather than at the state level, though the act was seldom enforced. Although the legislation might not change the prevailing racial attitudes in the North or South, the law aimed to protect African Americans from deprivation of the minimal rights of citizenship.

Unfortunately, the March 1883 Supreme Court overturned the law, deciding that neither the Thirteenth Amendment, which banned slavery, nor the Fourteenth Amendment, which guaranteed equal protection to all citizens, was infringed by the existence of uncodified racial discrimination, which could not therefore be constitutionally prohibited. This setback and nullification of the Civil Rights Act would remain in force until the Court disavowed it by upholding the Civil Rights Act of 1964, nearly 100 years later.

Separate but Equal (Plessy v. Ferguson 1896)

In a landmark decision of the Supreme Court, *Plessy v. Ferguson* (1896), a case regarding a partially African American's right to travel on the same train as white passengers, upheld the constitutionality of racial segregation laws for public facilities as long as the segregated facilities were equal in quality. The Court ruled that racial segregation was not in itself a violation of the Fourteenth Amendment's Equal Protection Clause if the facilities in question were otherwise equal, a doctrine that had become known as "separate but equal." Unfortunately, the decision legitimized the many state laws re-establishing racial segregation passed in the South after Reconstruction.

Jim Crow laws (named for a racist theater depiction of a character from a minstrel song coopted from an actual traditional slave song in 1828), were state and local laws that enforced racial segregation in the South, enacted in the late 19th and early 20th centuries by white Democratic-dominated state legislatures after the Reconstruction period. The Democratic party had established and upheld slavery and was behind the Confederate rebellion that led to the Civil War. Jim Crow laws mandated racial segregation in all public facilities and transportation, including coaches of interstate trains and buses. Sometimes these laws mandated the segregation of public schools, public places, public transportation, and the segregation of restrooms, restaurants, and drinking fountains. Of course, this separation also extended to housing.

Redlining (1935)

Nearly 40 years later, as part of President Roosevelt's "New Deal" efforts to pull the nation out of the Great Depression, and because of a need for banking and home loan reform in the 1930s, the Federal Housing Administration (FHA) was created in 1935 to regulate the rate of interest and the terms of mortgages that it insured. As part of this effort, the Federal Home Loan Bank Board (FHLBB) asked the Home Owners' Loan Corporation (HOLC) to look at 239 cities and create "residential security maps" to indicate the level of security for real estate investments in each surveyed city. Many minority neighborhoods in cities were outlined or shaded in red and labeled as risky for mortgage support and ineligible to receive financing. This practice became known as "redlining."

The maps were based on assumptions about the

community, not assessments of the ability of the individuals or households there to satisfy standard lending criteria. Since African-Americans were unwelcome in white neighborhoods, which frequently instituted racially restrictive covenants to keep them out, the policy effectively meant that blacks—and at times Latinos, Asians, and Jews—could not secure mortgage loans at all. The assumptions in redlining unfortunately increased residential racial segregation and fostered urban decay.

Despite Supreme Court decisions in the 1940s and 1950s that ended the exclusion of minorities from certain sections of cities, race-based housing patterns continued into the 1960s, even as the Supreme Court ruled in favor of desegregation in other areas such as education and public transportation (see below). Minorities who served in the armed forces had trouble renting or purchasing homes in certain residential areas because of their race or national origin, and many organizations lobbied for new fair housing legislation.

By the 1960s, civil rights activists cried out for countermeasures to undo the damage done by redlining and social policies of "separate but equal" that perpetuated inequality. With more and more frequent race rioting in major cities, where minorities had been forced to live in increasing numbers as white citizens fled to the suburbs, it became clear that something had to give. The need for fair housing measures became more and more apparent.

Brown v. the Board of Education (1951)

One of the court decisions that had moved the Civil Rights Movement forward took place in May 1951. The decision in *Brown vs. the Board of Education of Topeka* ruled that American state laws establishing racial segregation in public schools were unconstitutional, even if the segregated schools were otherwise equal in quality. The case had been lost at the state level when the Court for the District of Kansas rendered a verdict against the Browns, relying on *Plessy v. Ferguson*. In a *de facto* overturning of *Plessy v. Ferguson*, the Court paved the way for integration and handed a major victory to the Civil Rights Movement that was also fighting for equal access in all matters related to housing.

Executive Order 11063 (1962)

President Kennedy tried to address the problem of racial segregation and discrimination with Executive Order 11063 on November 21, 1962, entitled "Equal Opportunity in Housing" that prohibited discrimination on the basis of race, color, religion and national original in the sale, rental, or leasing of residential property and related facilities that are owned, operated, or financed in whole or in part by the federal government. This order also prohibited discrimination in the lending practices on loans insured or guaranteed by the federal government. The Order was later amended to cover sex-based discrimination and to protect families with children and people with disabilities.

Title VI of the Civil Rights Act of 1964

The Civil Rights Act of 1964 followed by outlawing discrimination on the basis of race, color, and national origin in any program or activity that receives federal assistance. It reads: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The Creation of HUD (1965)

In 1965 President Johnson, as part of his "Great Society" program to develop and execute policies on housing and metropoles, oversaw the creation of the U.S. Department of Housing and Urban Development (HUD) as a cabinet in the Executive branch, and the formerly created FHA (1934) became a part of HUD.

Johnson was dismayed at the failure of the government to pass fair housing legislation year after year, and the matter became a political hot potato. In desperation, he looked to a young senator from Minnesota named Walter Mondale to sponsor yet another fair Housing bill in 1967. In part due to a tragic turn of historical events, Mondale succeeded where others had failed. ■

See Part Two of this article including information on the Fair Housing Act and where we are today in next month's issue of *Santa Barbara Lawyer.*

Janet M. Eastman, CPM® is a graduate of Wellesley College and holds a master's degree from UCSB. She has worked in residential property management in the Santa Barbara area for the past 24 years as a regional property supervisor and a vice president. She is a Certified Property Manager through IREM and is currently the Senior Operations Specialist for the Towbes Group, which manages over 2500 multifamily units throughout Santa Barbara and Ventura Counties.

The material for this article was gathered from various on-line sources, including, www.britannica.com, www.us.gov, and www.propublica.org. Recommended reading: Nikole Hannah Jones, "Living Apart: How the Government Betrayed a Landmark Civil Rights Law" ProPublica, Oct. 29, 2012.

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1	2	3	4	5 Cinco de Mayo	6	7
8 Mother's Day	9	10	11 National Receptionists Day	12	13	14
15	16	17	18	19	20 Bike to Work Day	21 National Armed Forces Day
22	23	24	25	26	27	28
29	30 Memorial Day (Court Closed)	31				

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