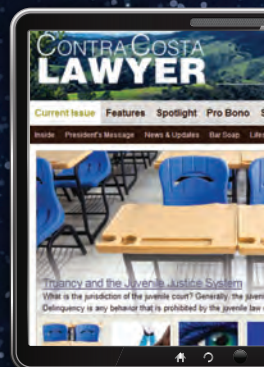


CONTRA COSTA LAWYER

Volume 25, Number 5 | October 2012

BEST OF THE WEB

A selection of the
most popular articles
from our online magazine



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The official publication of the

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This month, we present you with the *Best of the Web* - the most popular articles from our online magazine at www.contracostalawyer.org. Our editorial board selected the articles based on website analytics and narrowed down the choices to the six articles in this issue.

If you have never visited our online magazine, this issue is for you. Enjoy! We hope these articles will entice you to visit us at www.contracostalawyer.org in the future.

If, on the other hand, you are a loyal reader of the Contra Costa Lawyer, print and online, we hope you like this curated review and consider contributing to future editions. Our editorial board always looks for fresh voices and viewpoints, and we'd love to have your articles!



Kerstin Firmin

When we decided to launch an online companion to our print magazine two years ago, the reason was you. Our goals included providing you, our members, with better value by reducing sky-rocketing production and distribution costs and by lowering the magazine's carbon footprint. You told us - in our 2010 member survey - that our print magazine was important to you, so we knew we needed to find an innovative way to preserve and enhance the legacy print magazine. Our solution was a hybrid approach: We increased the number of publications from 10 to 12 per year, and changed the presentation to 6 bi-monthly print publications and 6 online-only editions.

Two years later, we want to express our gratitude with this issue. Thank you to our authors, guest-editors, readers and advertisers who embraced the new online platform and helped shape the publication into what it is today. Thank you for your contributions and your continued support!

A mere 18 months since we launched the first online-only edition, the Contra Costa Lawyer Online has already garnered national attention. Last Fall, the National Association of Bar Executives honored the Contra Costa Lawyer with a Luminary Award for Excellence in Electronic Publishing. This year, our online magazine began to attract more than 2,000 visitors each month and our readership continues to grow.

On a personal note, I would like to thank the members of the editorial committee and the communications taskforce for their support and unwavering commitment to innovation in delivering services to our members. •

Kerstin Firmin is the Communications Coordinator for the Contra Costa County Bar Association (CCCBA). In this role, Kerstin manages the production of the Contra Costa Lawyer and other CCCBA publications, as well as advertising. If you are interested in contributing to CCCBA publications, please contact Kerstin at kfirmin@cccba.org.



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DISCOVERY OF SOCIAL MEDIA



BEST OF THE WEB #1

by **Audrey Gee**

first published in the December 2011 online-only edition of the Contra Costa Lawyer at www.contracostalawyer.org. Scan the QRcode to the right to access the original article.



THE TREASURE HUNT

Facebook has nearly one billion active users (955 million as of June 2012¹). Rumor has it that Twitter has somewhere in the neighborhood of 500 million registered users² or 400 million tweets per day³.

Think about it - a veritable treasure trove for discovery. Photos of a personal injury plaintiff salsa dancing a week after the car accident. An unavailable witness tweeting that he is in town. A supposedly bankrupt defendant posting details on his newly purchased boat. Facebook, Twitter, MySpace, LinkedIn, Habbo, Orkut, Badoo, Qzone - the list of social media sites are rich with possible impeachment evidence.

While a criminal case, the August 2010 incident that ended with Paris Hilton booked on cocaine charges is a good example of impeachment evidence. The police pulled Paris over and found cocaine in her purse. Paris denied the purse was hers, but her claim was undone by her prior tweet - "Love My New Chanel Purse I got Today :)"⁴ - when she bought the purse.

If the witness is not a celebrity on TMZ (and you can pull information straight off the internet), the most direct way to obtain social media information is to ask witnesses to provide it to you. Document requests may contain demands for downloads of photos and posts on social media pages and webmail, and special interrogatories may ask for identification

of witnesses' social media sites, user names, passwords, and

access to accounts.

Social media users, however, do not have access to native format and can only produce a screen shot or a print-out of the requested information. Also, witness-

es may sanitize their social media pages and delete all incriminating photos or other useful evidence once they know litigation is afoot. In these situations, you may be tempted to obtain the information directly from Facebook or other social media sites, to shortcut the process and also head off any tampering allegations.

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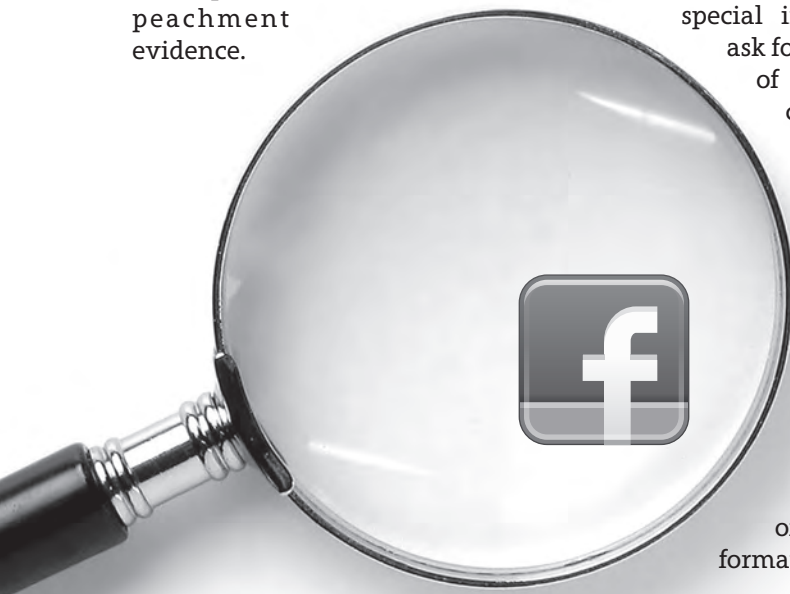


THE FEDERAL STORED COMMUNICATIONS ACT



Before you subpoena Facebook or other social media sites, you should keep in mind the Federal Stored Communications Act, often referred to as the "SCA," which generally prohibits a person or entity providing an "electronic communication service" to the public from "knowingly divulg[ing] to any person or entity the contents of a communication while in electronic storage by that service." It further prohibits a person or entity providing "remote computing service" to the public "from knowingly divulg[ing] to any person or entity the contents of any communication which is carried or maintained on that service." 18 U.S.C. 2702(a)(2).

Disclosure in violation of the SCA can expose the record holder to civil



liability. *Thofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004). The SCA applies to private information, i.e., information that is not readily accessible by the public. The SCA has several exceptions, most notably, that it does not apply to criminal or administrative subpoenas. 18 USC 2703(b)(2) & 2703.

In practical terms, this means that subpoenas to Facebook and their ilk may possibly be quashed. Take the case of *Crispin v. Audignier*, 717 F. Supp. 2d 965 (C.D. Cal. 2010) where the Court partially quashed subpoenas issued to Facebook, MySpace and other social media sites. There, Mr. Crispin sued Audignier, a clothing maker, alleging copyright infringement for use of his artistic works that went beyond the granted oral license. Defendants subpoenaed Facebook (and other social media sites) seeking communications and wall posts from Mr. Crispin concerning his art. Plaintiff moved to quash the subpoenas under the SCA. The magistrate judge rejected motion to quash reasoning that Facebook and MySpace were not electronic communications services because the websites' messaging services are used solely for public display and did not meet the SCA definition. The U.S. District Court



disagreed and noted that the SCA applied since the social media sites qualified as both Electronic Communication Services for their message delivery services and also as Remote Computing Services because they offered message storage services.



The Court found the communications at issue, both the webmail and email, were inherently private because they were not readily accessible to the public and quashed the subpoenas for those messages. The Court required a new evidentiary hearing to determine the privacy settings on Facebook and MySpace accounts and made no finding about the general discoverability

of the public wall posting and comments.

Other cases have permitted subpoenas to social media sites, despite the SCA. In *Ledbetter v. WalMart Stores Inc.*, the Colorado District Court denied the plaintiffs' motion for a protective order for their Facebook, MySpace and Meetup pages. Plaintiffs sought damages for personal injuries when the electrical system they were working on shorted out. One of the plaintiffs' wives brought a claim for loss of consortium. The court determined that the plaintiffs had placed their personal physical and mental states at issue and permitted the subpoenas. 2009 Dist. LEXIS 126859 at 4-5 (D. Colo. Apr. 21, 2009).



RIGHT TO PRIVACY

In addition to the SCA, privacy concerns also may be the source of objections, but whether they survive is an undecided question in California. Other states' cases offer their own line of reasoning on privacy issues, which may or may not be in line with California's Constitutional right of privacy. Cal. Const. Art. 1, § 1.

In *Romano v. Steele*, 907 N.Y. S2d 650 (2010) a New York trial court held that the private portions of a personal injury plaintiffs' Facebook and MySpace pages were discoverable. The court reasoned that neither Facebook nor MySpace policies guaranteed complete privacy, therefore there could be no legitimate



reasonable expectation of privacy in the private portions of current and historical pages of those websites. There, the Court found that the public portions of the plaintiff's social media sites contained material that was contrary to her claims and deposition testimony and that there was a reasonable likelihood that the private portions of her sites

might contain evidence that the plaintiff traveled and was happy (when plaintiff had claimed she was housebound and miserable). The Court ordered the plaintiff to give defendant direct access to log in and view her Facebook and MySpace accounts and have access to all records, including archived and deleted records.



Similarly, the Pennsylvania case of *McMillen v. Hummingbird Speedway, Inc.*, 2010 Pa. Dist. & Cnty. Dec. LEXIS 270 (Pa. County Ct. Sept. 9, 2010), involved a broad discovery statute which provided that unless there is a specific privilege that applied to withhold discovery, information must be produced. The defendant had heard that the personal injury plaintiff had been on a fishing trip and to prove that the injuries were not as serious as the plaintiff was making them out to be, defendant moved to compel plaintiff's user name, log-in names, and passwords. The plaintiff asked the Court to recognize that communication shared among one's



private friends on a social network was confidential and protected from disclosure. The Court reviewed the Facebook privacy policies, which said that your posts may show up on your friends' posts, and warned users that you may be then at the whim of your friends' privacy settings. The Court found no privacy interest in a Facebook password and no corresponding Facebook privilege. The Court directed plaintiff to not delete his posts or alter existing information on his Facebook or MySpace accounts.

There may be no significant difference between discovery of social media and discovery of other electronically stored information. In *EEOC v. Simply Storage Management* 2010 WL 3446105 (S.D. Ind. May 11, 2010), the defendant asked for photos, videos, postings and pro-

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DISCOVERY OF SOCIAL MEDIA,
cont. from page 9

files from two sexual harassment claimants' Facebook and MySpace accounts to discount their mental health damages. The EEOC objected to the request as harassing and embarrassing, and also because it improperly infringed on claimants' privacy. Defendant moved to compel. The court explained that discovery of social media simply "requires the application of basic discovery principals in a novel context." The Court rejected claimants' privacy arguments, stating that "a person's expectation and intent that her communications be maintained as private is not a legitimate basis for shielding those communications from discovery."

California has not directly addressed the privacy in social media issue in a discovery context, but the California Court of Appeal has opined that there can be no reasonable expectation of privacy in a public MySpace post. In *Moreno v. Hanford Sentinel, Inc.*, 9 C.D.O.S. 4208 (2009) a college student from a small town wrote an unflattering ode in her MySpace journal. She later removed the post, but it had already been republished in the local newspaper. The community reaction was negative, forcing the student's family to move and close the family business. In shutting down the invasion of privacy claim, the Court determined that "no reasonable person would have an expectation of privacy regarding published material" on MySpace, as it was a "hugely popular" social networking site and her potential audience was large.

AUTHENTICATION AND CREDIBILITY

The evidence gained from social media is still subject to all the standard tools to test the authentication, admissibility, and credibility of the evidence. Many celebrities, for instance, do not personally adminis-

ter their Twitter accounts or other social media brand outlets. A wall post may not truly reflect the reality of what happened that day. Photos of tagged witnesses may have been photoshopped or altered.

In its patent infringement case, Apple sued Samsung for allegedly copying the iPhone. Samsung shot back and alleged Apple submitted a photoshopped image of a Samsung Galaxy S to support its preliminary injunction. The photo in question contains side-by-side comparison of the Galaxy and an iPhone 3G in which the smartphones appear to be the same size, despite the Galaxy's larger size. Apple allegedly doctored another photo to try to make Samsung look guilty of design patent infringement.⁵

TOOLS FOR PRESERVATION AND DISCLOSURE

What is the best way to preserve social media during discovery? There are services such as Iterasi and Smarsh which offer to capture, preserve and archive email and webpages from social media sites. The old fashioned way of printing hard copies or saving screen shots to Adobe Acrobat works as well.

Another discovery tool is to request that the opposing party complete and sign a form that authorizes Facebook to disclose information from the party's own pages.

SOCIAL MEDIA AS PART OF YOUR DISCOVERY PLAN

Social media sites can give you a personal, fascinating and informative glimpse into witnesses' lives and their ways of thinking. These sites are areas rich with information to be discovered and investigated, keeping in mind the limitations and roadblocks you may encounter along the way. Discovery plans should consider the costs and benefits of pursuing this information and be integrated into the overall trial plans. Further, these investigations should also highlight the importance of the discussions you have with your own client and their online activity. In all, you would be well served to investigate and use the benefits of social media to your client's advantage. •

¹ The Associated Press (2012, July 27). Number of active users at Facebook over the years. Retrieved from <http://finance.yahoo.com/news/number-active-users-facebook-over-years-214600186--finance.html>

² TechCrunch (2012, July 30). Analyst: Twitter Passed 500M Users in June 2012, 140M of them in US; Jakarta 'Biggest Tweeting' City. Retrieved from <http://techcrunch.com/2012/07/30/analyst-twitter-passed-500m-users-in-june-2012-140m-of-them-in-us-jakarta-biggest-tweeting-city/>

³ Mediabistro (2012, June 7). Twitter Now Seeing 400 Million Tweets Per Day, Increased Mobile Ad Revenue, says CEO. Retrieved from http://www.mediabistro.com/alltwitter/twitter-400-million-tweets_b23744#more-23744

⁴ Gawker (2010, September 2). Does Paris Hilton's Twitter Prove the Cocaine-Filled Purse Was Hers? Retrieved from <http://gawker.com/5628938/does-paris-hiltons-twitter-prove-the-cocaine-filled-purse-was-hers>

⁵ Gizmodo (2011, August 19). Apple Filed Misleading Evidence Against Samsung...Again. Retrieved from <http://gizmodo.com/5832614/apple-filed-misleading-evidence-against-samsungagain>

Audrey Gee is the 2012 CCCBA President and a founding partner of Brown Church & Gee, LLP, a business centered law firm that offers a fresh approach to legal services. Audrey brings over 16 years of experience to a practice that focuses on litigation and management side employment counseling and risk management. Audrey's litigation practice has included representation of multi-billion dollar companies in contract disputes, defending publicly traded homebuilders in complex multi-plaintiff construction claims, and handling a broad range of business, real estate, employment and intellectual property disputes.

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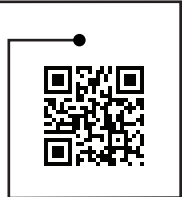
Why you should invest in your LinkedIn Profile



BEST OF THE WEB #2

by **Randy Wilson**

first published in the August 2011 online-only edition of the Contra Costa Lawyer at www.contracostalawyer.org. Scan the QRcode to the right to access the original article.



Attorneys have always had their information available in the public sphere, whether in a bar association directory or the Yellow Pages. But the times are changing. The current reality is that online directories are becoming an invaluable part of an attorney's business development plan. In fact, a LinkedIn profile is as ubiquitous as a Yellow Pages listing used to be. These days, the message is clear: if you aren't visible online, then you run the risk of losing both business and credibility.

WHY BE PART OF AN ONLINE DIRECTORY?

The question is really why wouldn't you be? Not having one is like not having a website; people might start to wonder if you are legitimate or if you are simply behind the technological times. And this isn't an image you want to project out to the public.

Taking this idea one step further, the rules of professional responsibility require that you remain competent. Increasingly, part of competence implies the ability to use available technology in order to best serve your clients: Rule 3-110 of the California Rules of Professional Conduct has been construed

to require attorneys to attain a basic level of technological competence when handling confidential client information. If an attorney has no web presence, clients may make assumptions about that attorney's technical, and even legal, competence.

WHY LINKEDIN?

Many people ask me which is more important: LinkedIn, Facebook, or Twitter. I always tell attorneys that if they had to choose only one social media platform, they should choose LinkedIn. While it's true that many professionals use Facebook and Twitter, these platforms are also for personal use. LinkedIn, on the other hand, is built specifically for professionals to show themselves in the most positive light.

LinkedIn is especially attractive to lawyers. If you take some time to look around LinkedIn, you'll notice that CPAs, lawyers, consultants, and finance and real estate professionals are highly represented. That's where you want to be, and the caliber of people you want to connect with.

That's not to say that you shouldn't spend time on other social networking sites. You should. But I highly recommend using LinkedIn as your hub for professional social network-

ing. By focusing on LinkedIn, you can have a central starting point, using other platforms as offshoots.

THE BENEFITS

The Yellow Pages deliver basic information. This is surely important if someone wants to get in touch, or learn about your background. But an online directory offers a broader view. It gives potential clients and referral partners something more objective than a standard bio and your contact information. On a LinkedIn profile, a person can see how you are connected to other attorneys, referral partners, organizations, and your community.

The most successful attorneys are actively involved in all of these groups, and letting others know about your involvement adds to your credibility. And when you include articles, blogs, or status updates on your profile, it reinforces the message that you are engaged with the issues that you practice.

HOW TO MAXIMIZE YOUR PROFILE

It's easy to whittle hours away on a social networking site like LinkedIn. But a strategic, targeted approach will get you where you want to go,

faster. Here are the most effective ways attorneys can use LinkedIn:

in To follow up. After you go to a networking event, use LinkedIn to stay in touch. Send a personal note that references how you met and ask them to connect.

in To promote your skills and associations. Are you an estate planner? Use your profile to talk about skills, associations, and groups related to estate planning to demonstrate your involvement in your professional community.

in To increase your visibility. Periodically, include status updates to increase your visibility. Again, be strategic: Think about how often you'd like to update, and then put it in your calendar as an action item. Effective status updates include a news article you want to comment on, a speaking engagement, news from the bar association, or a topic that is valuable to your network.

in To connect social media platforms. Make sure that you connect your social media. This means posting online profiles, publications, Facebook updates, or tweets to your LinkedIn profile. There are two ways to do this: you can have an outbound link that takes you to these platforms. Or you can set up LinkedIn to connect with other social media platforms so that when you post a status update, it automatically becomes a tweet or a Facebook post. With certain platforms like Wordpress, you can also stream your blog to your LinkedIn profile.

in To be known as an expert. LinkedIn's Answer feature helps promote you as an expert. Try asking a question to generate a response. Or find your specific area of interest and answer the existing questions. The more positive the response, the higher your ranking. Another way

to showcase your expertise is through the Martindale application, which allows you to promote your Martindale peer and client ratings with a logo and summary on your profile.

in To publish and promote content. It's savvy to have original content that displays your expertise. JD Supra sponsors a legal update feature specifically for attorneys. Through this feature, you can get your material published, allowing people to sign up and search topics of interest. (These articles are available both on JD Supra and under Legal Updates on LinkedIn.) Another option for getting your content read is LinkedIn's Slideshare Application, which allows you to re-purpose presentations you've given.

LINKEDIN AND LEGAL ETHICS

Social networking and online marketing have unleashed a totally new world when it comes to legal ethics. However, the legal system — and in particular bar associations that govern attorney ethics — have been slow to understand that significant issues exist around social media, figure out what they are, and provide attorneys with legal guidance on how to deal with them.

In this veritable legal Wild West, here are a few issues that can arise and how to handle them within the law's ethical guidelines.

ETHICAL QUESTION: **SHOULD I FILL THE SKILLS AND EXPERTISE SECTION?**

Under your summary in LinkedIn, there is a subheading that allows you to name your skills and expertise. This section used to be called "specialties" but has been renamed "skills and expertise" which makes it safer for attorneys as specialties was a term of art for state bar legal certification programs. While bar

associations frown on non-certified attorneys calling themselves "experts", claiming expertise blurs the line enough to probably be acceptable.

ANSWER: The new wording of "skills and expertise" makes it safe for attorneys to utilize this field without running afoul of state bar rules. However, until this is actually challenged, it is impossible to know for certain.

ETHICAL QUESTION: **CAN MY CLIENTS WRITE ME A RECOMMENDATION?**

Both California and ABA rule requires that if a client gives a testimonial on your behalf, you are required to include a disclaimer that says the testimonial does not guarantee a successful outcome. The problem is that LinkedIn doesn't have a place to include your disclaimer.

ANSWER: One possible scenario is having the client write the disclaimer. But for attorneys, for whom the foremost ethical responsibility is confidentiality, this isn't always the best idea. Even if a client is willing and able to give a recommendation, the client should be aware of the consequences of being identified as a client. As attorneys, we assume the burden of that responsibility. That's why even if the client is willing to write a recommendation accompanied by a disclaimer, it isn't always the best course of action. The safest bet, in my opinion, is not having recommendations at all.

ETHICAL QUESTION: **CAN I MAKE CLIENTS PUBLIC?**

LinkedIn is an opt-in or opt-all out platform, where you'll need to decide if you will have everyone transparent or everything hidden. This causes a dilemma for attorneys, who might want their network and referral partners transparent, but not their clients.

ANSWER: Unfortunately, there isn't an ideal solution on how to handle

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THE LAW & LINKEDIN,
cont. from page 13

this: as it stands, you'll need to either lose out on the referral benefits of LinkedIn and make everything private, or have your clients sign a document that indicates they've agreed to the publication of your relationship. However, if you feel that it isn't in their best interest, the onus is still on you to reject the connection. Of course, if you share a connection with the person viewing your profile, he or she can also view the connection you have in common.

ETHICAL QUESTION:

WHAT KIND OF INFORMATION CAN I MAKE PUBLIC?

ANSWER: Because confidentiality is of paramount importance to attorneys, this makes some of the features of LinkedIn problematic. It's good to err on the side of caution when it comes to client confidentiality. It's not that you have to shut down your social networking. But good judgment is always the cornerstone of your decisions. Just because there is no official rule saying that you can't thank a client by name on your LinkedIn status for a referral, for instance, this choice still shows bad judgment as they may not want the information made public.

THE FUTURE LOOKS LINKED

Things move fast in the world of social media. Today, it damages your credibility to have no LinkedIn profile. But in a year or two, it might be damaging to have only a minimal profile.

I see a future where LinkedIn adapts to the needs of professionals, helping each industry work within the ethical rules of their trade. I'm also hoping that LinkedIn will make it easier to choose individual people for either public or private viewing, making it friendlier for

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attorneys who want the ability to choose. And with the proliferation of video, I predict that LinkedIn will use that medium to its advantage.

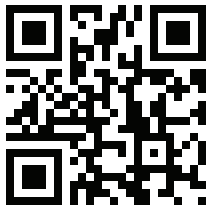
And remember, LinkedIn isn't the only one that will change with the times. As social media evolves, attorneys should evolve with it. •

Randy Wilson is the co-founder of DSD Law Site Solutions and founding member of the Business Advisory Resource (B.A.R.) Group

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Earn one hour of Legal Ethics MCLE credit after reading the article above by answering the questions on the Self-Study MCLE test form. Send your answers, along with a check for \$20 (\$30 for non-members), to the address on the form. You will receive an MCLE certificate within one week.

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BEST OF THE WEB #3

by **Dana Santos**

first published in the April 2011 online-only edition of the Contra Costa Lawyer at www.contracostalawyer.org. Scan the QRcode to the right to access the original article.



As a busy family law attorney, I can tell you that many things consume my time. Here are my top ten time-burning, schedule busting activities:

-  Reading 12 emails from the same client anguishing over who has the right to walk the dog this weekend (generally sent between 2am and 3am)
-  Explaining to clients why taking all the money from the family bank account might not be such a wise idea
-  Reviewing the email from opposing counsel that copies the letter that duplicates the fax that reiterates and confirms the telephone call I just had with opposing counsel
-  Picking up the same piece of paper I have already picked up 5 times during the past week, because the last 4 times I picked it up I read it and didn't want to deal with it
-  Being polite when my office mate walks into my office and insists on discussing why

the football lockout is a crime against humanity and why football team owners are the spawn of Satan, even when a) I could care less about over-paid athletes and their "troubles" and b) I really, really, really need to get this pleading out



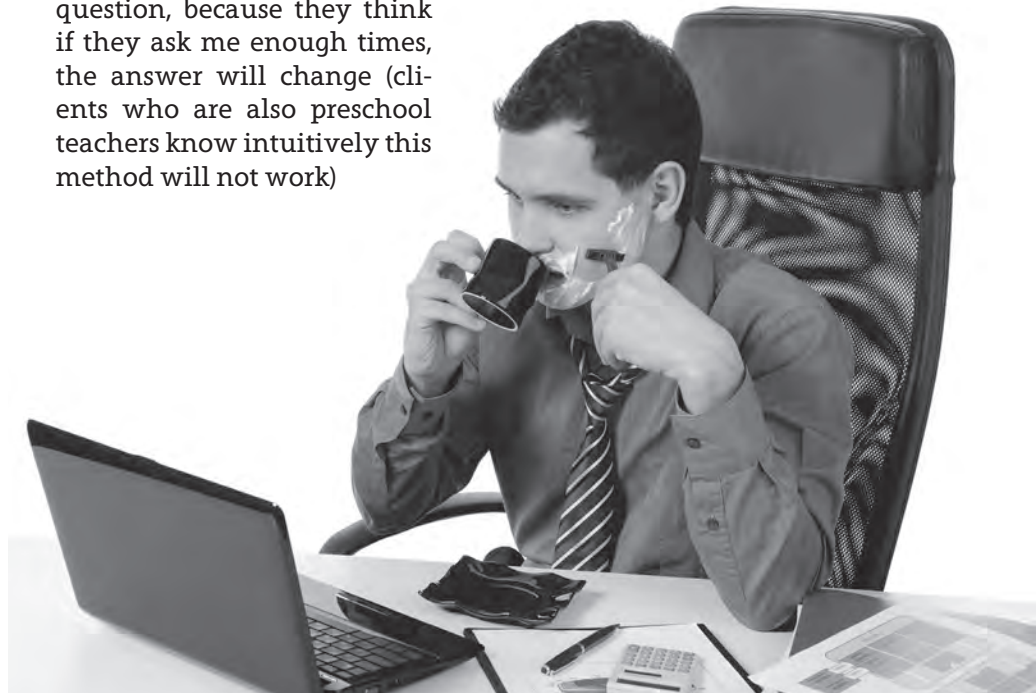
Giving a client the same piece of advice that I've given them the last 5 times they asked the question, because they think if they ask me enough times, the answer will change (clients who are also preschool teachers know intuitively this method will not work)



Reading those wonderful and disgusting joke emails from the uncle in Louisiana that must be read before any work gets done (why do all the really interesting looking people shop at Wal-Mart?)



Deleting all the email ads from West, Amazon, Travelzoo, Intuit, InkSell, TigerDirect, Hotwire, Yoshi's, Brookstone



and other internet purveyors of unneeded consumer crack (there is a price for shopping online - what you save in gas you lose in lost years of your life getting off email lists)



Watching for that little email blurbie thing in the bottom right hand corner of my computer screen that tells me EVERY time an email comes in and, like a Pavlovian dog, I immediately click on the email to see who likes me enough to send me email



Giving my clients excellent, well-reasoned, thoughtful advice, then doing the exact opposite myself

While the above is mostly tongue in cheek, the reality is we all waste a huge amount of time every day doing things we either don't need to do, or don't need to do RIGHT NOW. This results in lost income. How many times have you walked into your office at 9am, looked up at the clock at 5pm, and realized you had billed .8 all day?

I do not claim I am a master of time management. I am simply pointing out some techniques for people like me who want to try a few simple things to increase their productivity.



Buy a scanner. As a solo, this machine is worth every cent I paid for it (ScanSnap \$1500.) I can read, forward to a client and electronically store information in seconds. While I have not slain the paper dragon, this technology has given it a mortal wound.



Resist the temptation to read email as it comes in. I know this is hard and if you're like me it will take months of really expensive therapy to fully understand why you

want people to love you, but the fact is this is a huge time burner. Discipline yourself to read email on a schedule. I try to read first thing when I come in, then during or immediately after lunch, and finally at around 4pm.



Don't answer your phone. (Attorneys everywhere in the county are reading this and thinking "Hmmm, I thought she was just avoiding me.") If you're just sitting at your desk sorting mail, pick up the phone. However, if you are in the middle of a task requiring concentration, which is more often than not, that phone call will cost you (and your client) time and money. If I'm working on a three page declaration and I break for a call that is not an emergency, I have to reread that declaration from the beginning, re-collect my thoughts and attempt to recall the brilliant legal theory that was on the tip of my tongue when the phone rang. Instead, listen to your voicemail in the morning and return calls or reply by email as needed. Get work off your desk, and then take a break for calls before lunch. Do the same in the afternoon.



Reply to clients by email whenever possible, not phone. As a solo I have to ensure that I am operating as efficiently as possible. It doesn't make sense for me to have a telephone call with the client, then write up my notes for the file, then write a letter to the client confirming the conversation. If a client has a question, you can respond quickly and thoroughly to their question by email, while simultaneously making your note for the file and providing

something in writing to them to refer to at a later time, thereby saving them money when they need to review that piece of advice/information. While we know the ins and outs of our business, we sometimes forget that clients often have a huge learning curve and cannot retain all the information we give them.



Do one task at a time. Period. If your staff thinks an open door means you're free to talk, then either shut your door or let them know that you are not available. There is no such thing as a "quick question."

Finally, accept that your brain is no longer a steel trap (if you grew up during the summer of love and spent lots of time in the Haight, let's face facts, your mind was never a steel trap.) You might as well acknowledge this reality and come to terms with it. You are past the age of forty and your brain works differently than it did when you were twenty. You are capable of more complex thought and more sophisticated reasoning, but your ability to access short term memory is impaired. Encourage your brain's ability to focus and retrieve information by rejecting the temptation to multitask. Put systems in place to keep you organized, efficient and time effective, then do your best to follow those systems.

And finally, do as I say, not as I do.

Dana Santos is a certified family law specialist in San Ramon, California.

Celebrating the Honorable Richard E. Arnason...



On August 24, more than 70 guests and members of our local legal community gathered for a luncheon to celebrate the newly renamed Richard E. Arnason Court Scholarship program.

left to right: Sherry Dorfman, Richard E. Arnason Court Scholarship Committee member; Hon. Richard Flier, Ret.; Ken Reynolds, Court Scholarship President



The Court Scholarship Fund was established in 1992 to honor Judge Arnason's long-time commitment to the court system and rehabilitation for ex-offenders. As Judge Arnason has now fully retired from the bench, the scholarship is being renamed in his honor as originally intended.

left to right: Justice Maria Rivera, Ken Larson, Justice Mark Simons, Larry Cook, Barbara Suskind



The fund provides scholarships to Contra Costa residents with juvenile or criminal histories who are pursuing educational goals. Individual scholarships are granted to pay for tuition, books, childcare and other expenses related to continuing education.

Former scholarship recipient Keneithia Resino (center) with Bill Gagen, Mike Markowitz & Amanda Bevins, long-time supporters of the scholarship program.

...and the Richard E. Arnason Court Scholarship

Scholarship Awards are generously provided by the Gagen, McCoy, McMahon, Koss, Markowitz & Raines law firm, which has participated as an annual awards sponsor for over a decade, the Tom Oehrlein Award in memory of a former public defender, and by individual contributions.

*left to right:
Jonathan Laba; Hon. Leslie G. Landau;
Hon. Clare Maier*



During the lunch, former scholarship recipient Keneithia Resino spoke movingly about how the program enabled her to pursue her goal of becoming a social services case manager. The scholarship allowed her to excel as a student, while working and taking care of her children. Keneithia continues to work towards her degree in Health and Human Services.

*left to right:
John Coker; Hon. Richard Flier, Ret.;
Stan Casper; Nick Casper*



Keneithia's goal is to become a social services case manager and, in her own words, 'a powerful tool for social change and betterment in the lives of young girls and women.'

For more information about the Richard E. Arnason Court Scholarship, please contact Theresa Hurley at thurley@cccba.org or 925-370-2548.

*left to right:
Ken Torre, Ron Mullin*



ALL “ATWITTER” WITH THE INTERNET JUROR

Legislation Addressing the Wired Public



BEST OF THE WEB #4

by **Karen Fleming-Ginn, Ph.D.**

first published in the December 2011 online-only edition of the Contra Costa Lawyer at www.contracostalawyer.org. Scan the QRcode to the right to access the original article.



The Internet's instantaneous availability of information poses a direct threat to the integrity of the judicial process, and presents a king-sized bear trap to lawyers in voir dire. This article addresses the resources available for juror investigation, the pitfalls of employing social media in trial, and legislation designed to dissuade jurors from Googling during trial.

INSTANTANEOUS INVESTIGATION OF JURORS ON THE INTERNET

Numerous websites provide lawyers with investigative tools to find out where jurors live, their likely income and employment, political leanings, even hobbies and buying practices.

FREE RESEARCH TOOLS



The site PIPL.com provides a compilation of both free and pay-for-service information concerning just about anyone. It includes residential address and telephone information, Facebook and LinkedIn pages, possible photographs, even Amazon purchase preferences. It is a very powerful tool, and a gateway to other reference services.

LinkedIn provides a broad database of employment and employment history, as well as potential connections and relations. Typically, a LinkedIn profile provides only a small glimpse, with additional information only being available if the person agrees to be “linked” to you.

Once you have a street address, Zillow.com can provide you with insight as to the prevailing real estate prices in the neighborhood. This can establish a fairly good indicator of the likely income range of the person who lives in a particular neighborhood.

If anyone has made a contribution to a political campaign, information concerning the donor's occupation and likely political leanings are available on numerous websites, such as OpenSecrets.org and MapLight.org. You can also find out the party affiliation and voter eligibility status through the County Elections Division if you have a birthdate and an address of a person.

For likely estimates of salaries for a particular profession, Glassdoor.com provides salaries posted anonymously by employees.

PAID RESEARCH TOOLS

There are numerous paid research tools available on the Internet. Two prominent services are Accurint.com and Merlindata.com. Both services provide a fairly reliable means of identifying addresses and telephone numbers. In addition, professional and other types of licenses are available. In general, these pay sites provide more targeted information that can provide a good starting point for other research. There are also sites such as KnowX.com and ZabaSearch.com which can quickly find public records at little or no cost. A combination of all of these sites can typically garner a lot of information about a person easily, whether accurate, helpful, or not.



THE IMPACT OF SOCIAL MEDIA ON TRIALS

Most people under the age of 40 have embraced social media as a means to broadcast information to friends and total strangers about the minute and intimate details of their lives. Social media tends to be very fickle and dynamic in terms of its usefulness. For example, MySpace.com used to be very popular and is now all but useless. Facebook is becoming less of a useful tool because of the privacy restrictions that most users employ to limit access, but there is always the occasional Facebook user who keeps quite a bit of information public. Twitter is very trendy, but appears to appeal to a fairly narrow segment of the population. By the way, to learn someone's Twitter account, websites like Listorious.com and WeFollow.com provide immediate links to those who have registered.

As a jury consultant, the availability of information about prospective jurors from social networking sites initially seemed like it would greatly simplify the task of rooting out the potential prejudices of prospective jurors. However, applying these tools to the voir dire process has proved to be a challenge.

A significant limitation on the information that is publicly available is one of reliability. It is not uncommon for people to have an Internet persona that does not reflect real life. Anyone who has spent time on Match.com or similar Internet dating sites can attest to how different people are from how they present themselves. Another thorny issue is whether to actually use information gleaned from the Internet in the questioning of jurors.

As with any new technology or opportunity, there is a limit that is not yet clearly defined, in terms of how far we can go to delve into the lives of prospective jurors. Some judges find it distasteful to do internet research on panelists. This predilection will likely be discussed as part of judges' initial script, but so far, it is not in the norm. If jurors make it known that they only want their posts viewed by registered users, then that should be considered private and off-limits. Don't communicate in any way with prospective jurors, either anonymously or using your screen name. Remain keenly aware that the public persona jurors put forth may be quite different than their actual personalities. The details about music preferences, political leanings, spare-time activities can be interesting but are not a substitute for views, attitudes, beliefs, biases and prejudices. It can be very seductive to attempt to create a profile of a person based on this external data, but before eloping with speculation, use this information as interesting background material and cement the assumptions with follow-up questions in court. Prospective jurors can become uncomfortable if they feel they have been researched outside of the con-

finer of a questionnaire, so carefully couch questions so they are not alerted to the fact that you read through all of their Facebook and Twitter posts.

Social media can also have an impact upon a trial as it progresses, particularly one that has had pre-trial publicity. In high profile trials, a daily analysis of social media sites and blogs can provide a strong dose of public opinion, but its value can be difficult to assess. Depending on the public's sources of information, social media sites can provide similar feedback to what a shadow jury can provide. Regardless of the veracity of people's reactions, it is important to take the pulse of people who are at least paying attention to the trial. This type of information can help identify holes in a particular case, or assess the need to change course.

The internet can be invaluable in learning about not only jurors, but witnesses alike. M.E. Greenberg, President of Greenberg & Associates Investigative Services in Sacramento said, "Basically, I always use Facebook.com and Ancestry.com on all my cases. If the client is under 40, I can glean reams of contacts and witness history, from looking at both the client's account as well as their cohorts. I use Ancestry.com to trace relatives. Many of my clients in death penalty trials do not know their relatives and use this new information to look for their Facebook accounts."

Some people prefer to have a very limited or non-existent online presence. One expert witness, Psychologist Dr. Gretchen White, said, "The last thing I want is to be cross-examined on the witness stand about my personal or professional life from LinkedIn.com or Facebook." This is understandable and important to think about as an expert or a lawyer deciding whether to have someone testify at trial. Lawyers, as well, should consider their online profile as being readily accessible by jurors and opposing counsel in the course of a trial.

NEW LEGISLATION CURTAILING JURORS' USE OF INTERNET DURING TRIAL



On August 5th, 2011, Governor Brown signed California Assembly Bill 141 into law. AB 141 solidifies rules prohibiting the use of social media, search engines and electronic devices by prospective jurors to discuss or conduct internet research on cases or parties. The new bill, which became effective January, 2012, forbids jurors from using electronic or wireless devices to contact court officials. The new bill:

[Will] require the court, when admonishing the jury against conversation, research, or dissemination of information pursuant to these provisions, to clearly explain, as part of the admonishment, that the prohibition applies to all

forms of electronic and wireless communication. The bill require[s] the officer in charge of a jury to prevent any form of electronic or wireless communication. Jurors who disobey the new bill will be placed in contempt of court.

The new Assembly Bill is a good start, but it will be most interesting to see if jury verdicts are overturned by internet communications that peripherally or directly relate to seated jurors during the time of jury service.

JUDICIAL SOLUTIONS TO JUROR GOOGLING

Many judges have taken up their own approaches to the problem of juror "Googling." Many judges take the initiative of admonishing jurors that while seated as a juror, ANY type of outside research is juror misconduct and will not replace or augment evidence presented in the courtroom. Inquiry during voir dire of a juror's use of the Internet may soon become a required part of any questioning.

Some judges are having jurors provide a written commitment not to use the Internet during trial. I recently selected a jury in Alameda County and we had a 2-page questionnaire. On the top of the first page, underneath the lines for name and city of residence, I stuck in a question similar to the verbal admonishment typically given by the judge stating that jurors would not be able to use Google, Twitter, Facebook, MySpace or any other social media. Then, they were asked whether they would be able to abide by that admonishment with boxes provided to check "Yes" or "No". A total of 6 jurors out of 60 checked the box that they would not be able to abide by that – four of which were later excused for cause based solely on that issue and how they responded to the Court. Our trial team was lucky in that case. Three out of the four jurors excused were unlikely to be favorable for our case, saving us from losing any of our precious peremptory challenges on them.

This kind of written admonishment can take several forms. Even if a questionnaire is not used, jurors can be asked to refrain from any type of extracurricular research and then sign a piece of paper under penalty of perjury. Judge Shira Scheindlin of the District Court in Manhattan used the following pledge to get jurors to promise in writing that they will not conduct any internet research:



JUROR PLEDGE

I agree to follow all of the Court's preliminary instructions, including the Court's specific instructions relating to Internet use and commu-

nications with others about the case. I agree that during the duration of this trial, I will not conduct any research into any of the issues or parties involved in this trial. I will not communicate with anyone about the issues or parties in this trial, and I will not permit anyone to communicate with me. I further agree that I will report any violations of the Court's instructions immediately.

Signed under penalty of perjury.



Signature: _____

I have found that it is helpful if the Court explains why such an admonishment is necessary. When jurors understand that what is available on the information superhighway is often not true or accurate, or there are legal reasons why some information is allowed as evidence and some is not, it can ease jurors' temptations to sleuth. Also, the Court can try to get the jurors to appreciate that if they were a party in a lawsuit that was going to a jury, they would not want jurors to find their "evidence" on the Internet.

CONCLUDING THOUGHTS

Internet resources provide a competitive advantage for those litigating against large, well-funded opponents. It is no longer necessary to expend thousands of dollars to investigate basic juror backgrounds, but lawyers need to treat the information obtained with great care, lest a juror become hostile from discovering his or her private lives have been uncovered.

Those savings have also come at the cost of making information about all trial participants available to even casual web surfers. Lawyers should consider whether the Internet reputation of a particular witness may affect the credibility attached to that witness.

The true challenge presented by the Internet is educating jurors concerning the unfairness of having jurors obtain information outside of a trial that may be of questionable validity. Legislative and judicially crafted remedies are unlikely to result in jurors taking a hiatus from their iPads during the course of a trial. Trial lawyers should work with the Courts to get the message across that our system of justice can work only when evidence considered by a jury is limited to the facts presented in the courtroom, and not the chat-room. •

Dr. Karen Fleming-Ginn is President of Verdix Jury Consulting, Inc. in Walnut Creek and has been selecting juries in California for 20 years. (925) 256-4479

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NOT YOUR FATHER'S ESTATE PLAN

BEST OF THE WEB #5



by **Stefanie West**

first published in the August 2011 online-only edition of the Contra Costa Lawyer at www.contracostalawyer.org. Scan the QRcode to the right to access the original article.



Estate planning attorneys commonly hear war stories from clients who served as the successor trustee of their parents' estate. Some stories are more memorable than others.

Last year, a client was recounting her experience as trustee and beneficiary of her father's estate. Dad's trust divided the estate equally amongst the children. One of her siblings, while a "nice person," never really grew up. The sibling had creditor problems, could not hold down a job, divorced a few times and had recently filed for bankruptcy. This was not an unusual story.

Unfortunately, her hands were tied as the trustee. Dad's trust required her to distribute each beneficiary's assets "outright and free of trust." There were no provisions to withhold distributions. Just as she had suspected, the inheritance evaporated the moment she wrote the distribution check. The bankruptcy judge immediately attached the funds and the inheritance disappeared.

I had heard variations of this story but this was the first time I had met a family who personally experienced this. As a planner, it was very frustrating to know this could have been

prevented. Dad's hard-earned money could have been sheltered from his child's creditors if the trust was structured differently.

I have heard many clients' fears about leaving money to family members who rack up debt, are in litigious occupations or in a rocky marriage. Far from being grumpy curmudgeons, these clients have legitimate concerns. According to the American Bankruptcy Institute, more than 1.5 million people filed for personal bankruptcy in 2010, up 9 percent from 2009. According to the U.S. Department of Health and Human Services, the mean medical malpractice amount for physicians in 2006 was \$311,965. More than fifty-percent of marriages in the U.S. still end in divorce.

Estate planning has evolved to address these issues and the changing nature of society. Classic trust distribution provisions typically provide either an outright distribution or a structured trust. A structured trust pays the beneficiary a portion of assets at specified ages until the trust is depleted. While outright and structured distributions are easy to administer (and for the client to understand), funds can be taken by the beneficiary's creditors once trust funds are distributed directly to the heir.

By contrast, if the trust provides that the heir's inheritance shall be distributed to a Beneficiary Controlled Trust, funds are not distrib-



uted outright. Funds remain in trust and are administered by the beneficiary as trustee. Assuming that the heir is savvy enough to keep the assets in trust, these funds are beyond the reach of creditors and divorcing spouses.

As the Trustee, the beneficiary may remove funds from his or her own trust. However, once trust funds are removed, they lose the "protective wrapper" and can be exposed to creditors. To maximize asset protection if a creditor problem develops, the beneficiary should resign as trustee. A third-party trustee who is not related or subordinate to the beneficiary under IRC § 672(c) should then be appointed.

I always ask clients whether they would like to have trust funds distributed outright or remain in trust after their death. Even some clients whose heirs have sterling credit and are excellent savers prefer beneficiary controlled trusts. Some clients are persuaded by the asset protection features. Others believe that segregating assets from the beneficiary's own estate creates a greater awareness that the inheritance was a result of another's hard work and efforts.

There is no one-size-fits-all for clients and beneficiary controlled trusts are not for everybody. I have some clients who believe that they are too complicated or are turned off because of the additional expense of an ongoing administration. Others reject the idea of a beneficiary controlled trust because, in their mind, an heir with creditor problems deserves to lose his or her inheritance.

My client, the Trustee who could not save her sibling's inheritance from bankruptcy creditors, chose a beneficiary controlled trust for her own estate. Fortunately, in the twenty years since her father drafted his living trust, estate planning techniques have evolved to offer additional choices that may better suit our client's needs. •

Stefanie West is an estate planning attorney in San Ramon and lives with her husband Jim in Lafayette.

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EMPLOYERS FACE TRICKY ISSUES WITH WORKPLACE ROMANCES



BEST OF THE WEB #6

by **James Wu**

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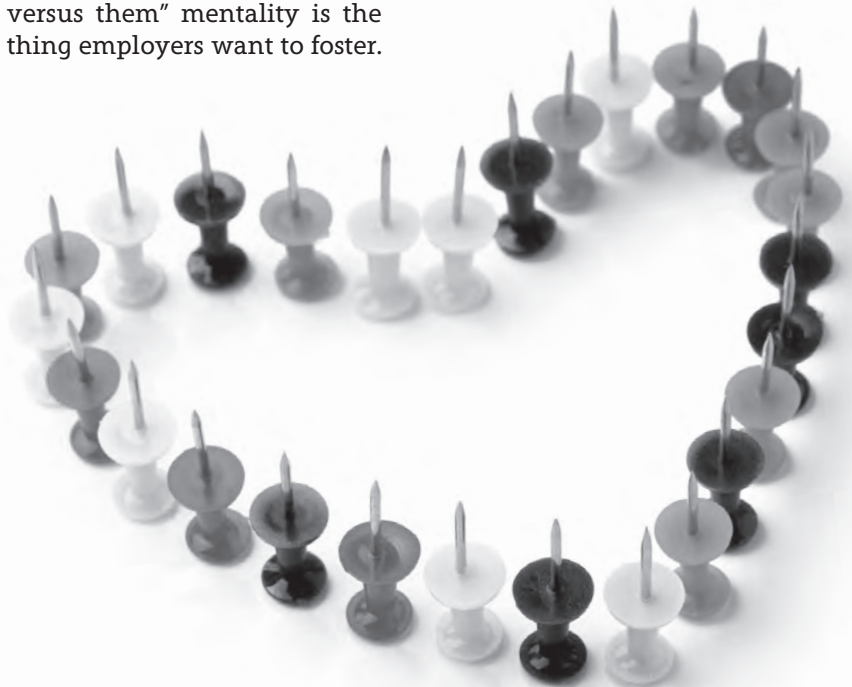
In 2003, 47% of survey respondents admitted to having an office romance, according to Vault.com's 2003 Office Romance Survey. Eight years later, in Vault.com's 2011 Survey, the percentage increased to 59%. It's no wonder why workplace romances thrive and seem to be increasing. Workers in all types of jobs spend most of their waking moments at work developing professional and personal relationships with their colleagues. Often, co-workers share similar education and income levels, intellectual interests, and commiserate over the same workplace stresses. Through these and other connections, relationships between co-workers can quickly evolve from platonic to romantic.

Certainly, many employees worry about their jobs and what a workplace romance might do to their job security and relationships with other co-workers. Similarly, employers worry that workplace romances will harm the work environment, lead to low morale, dissention, and lawsuits for sexual harassment. Here are some issues for employers to consider when addressing workplace romances.

DO NOT ATTEMPT TO PROHIBIT ALL WORKPLACE ROMANCES

As much as an employer might like to, attempting to establish a complete ban on workplace romances is not a good idea for a number of reasons. First, it will likely be difficult, if not impossible, to enforce such a policy. And, by having a policy prohibiting all workplace romances, employees may feel they must hide from and deceive their supervisors and co-workers. This type of "us versus them" mentality is the last thing employers want to foster.

Second, when workplace romances do not interfere with an employee's work performance, and do not otherwise cause any disruption to the workplace, employers can do very little to prohibit these consensual relationships. This is so, because, at least in part, the California Constitution protects employees' right to privacy, and California Labor Code Section 96(k) explicitly protects "lawful conduct occurring during nonworking hours away from the employer's premises." Thus, to the extent the ac-



tions of the romantic couple do not affect the workplace, employers are unable to prohibit these relationships.

CREATE AND ENFORCE POLICIES THAT MAKE SENSE

Employers, however, are not completely powerless. For example, they can adopt a policy restricting relationships that create actual or potential conflicts of interest, and informed consent policies/love contracts.

Conflicts of Interest: The most common type of conflict of interest arises when a manager/supervisor is in a relationship with a subordinate. Employers have legitimate concerns that such relationships may jeopardize business judgment, lead to breached confidentiality, and reveal a lack of judgment by the supervisor. Furthermore, such a relationship may be perceived by other employees to foster inappropriate favoritism and may lead to claims of quid pro quo or hostile environment sexual harassment. As a result, businesses should consider a policy prohibiting relationships between supervisor and subordinate, particularly when the two employees are in the same "chain of command." This policy may also require that dating employees disclose relationships that may create a conflict of interest, and the policy should make clear that the employer may take appropriate action to eliminate any conflict of interest (such as transferring one of the employees, if possible.) Note, however, employers should be ready to articulate a business justification for such a transfer in order to lessen the chance of a discrimination claim. At least one California appellate court has enforced an employer's conflict of interest policy prohibiting supervisor-subordinate romances. In *Barbee v. Household Automotive Finance Corp.* (2003) 113 Cal.App.4th 525, the Court found that a supervisor's fail-

ure to notify his employer of a relationship in violation of the conflict of interest policy was not protected by the California Constitution or the Labor Code. The Court found that the employer had a legitimate interest in avoiding the conflict of interest and that because the supervisor knew his relationship violated the applicable policy, he had a lower expectation of privacy.

Informed Consent/ Love Contracts: Though the legal effect of love contracts is unclear in California courts, they may provide some protection to an employer should the workplace romance result in unwelcome behavior. Informed consent policies and love contracts typically require that each party to the relationship confirm that the relationship is consensual, and that the relationship will not interfere with the parties' job performance and will not negatively alter the work environment. The love contract should also reiterate the employer's anti-harassment policy. The contract should put the ball in the parties' court to notify the employer of any unwelcome behavior and change in the relationship. Whether or not informed consent/love contracts make sense depends greatly on the dynamics and size of the employer. Also, before implementing this tactic, the employer should consider whether such contracts would be seen as intrusive by employees and therefore create a backlash. And, employers should be prepared with an appropriate response to a couple who refuses to sign such a contract.

Professional Behavior/ Code of Conduct: Another policy employers may consider is one that promotes professional behavior in the workplace. Public displays of affection ("PDA") and sexual banter may make other employees uncomfortable, can be considered unprofessional and may give rise to complaints of sexual harassment. Employers can direct their employees to always behave in a profes-

sional manner at work, and to refrain from PDA and sexual banter at work.

Finally, while it may be tempting, employer policies should not prohibit adulterous relationships that do not give rise to conflicts of interest or otherwise harm the work environment. Barring adulterous relationships, and not other relationships, may violate the California Fair Employment and Housing Act's ("FEHA") prohibition of marital status discrimination. The same goes for attempting to only focus these policies on same-sex romances.

Ultimately, clear and effective written policies will help employers maintain professional work environments. Like all policies, workplace romance policies should be applied consistently to all employees regardless of an employee's job position, sexual orientation, gender, race, marital status, or any other protected characteristic.

ESTABLISH AN ANTI-HARASSMENT POLICY AND PROVIDE ON-GOING TRAINING

Like any relationship, workplace romances may end in heartbreaking fashion. Employers become prime targets when one employee later claims that the workplace romance was actually non-consensual (quid pro quo sexual harassment) or that it created a hostile work environment. Furthermore, employees outside of the workplace romance may claim to be subjected to a hostile work environment as a result of perceived or actual favoritism by those involved in the workplace romance. For example, in *Miller v. California Department of Corrections* (2005) 36 Cal.4th 446, a supervisor was involved in sexual relationships with a number of women he supervised, and those women received promotions and received favoritism. The California Supreme

Court recognized that such favoritism could be actionable when it is "severe or pervasive," as in *Miller*.

Thus, even if an employer does not want to specifically address workplace romances, every employer should have a harassment prevention policy. Anti-harassment policies should make clear what conduct is prohibited, who is protected, how employees can get help and report complaints, and what steps the employer may take once a complaint is made (including investigating and taking appropriate corrective action.) Having a strong and clear policy, though, is just the first step. Employers must also ensure that the policy is disseminated to all employees and that employees truly know to whom to turn if they have any questions or concerns.

Furthermore, training is key (and mandatory in California for employers with 50 or more employees.) At a minimum, supervisors and managers must receive sexual harassment training every two years. The training must meet very specific requirements including length, who is able to provide the training, the format of the training, and the subject matter discussed. Additionally, supervisors should be trained on

the employer's conflict of interest policy and why it is not a good idea for supervisors to be in a romantic relationship with a subordinate.

While California law only requires supervisory employees to receive training, employers should consider training non-supervisory employees as well. Doing so will help ensure that every employee understands the company's policy on prohibited harassment and its related policies concerning workplace romances, conflicts of interest and professionalism. Furthermore, providing such training uniformly demonstrates the employer's dedication to prohibiting harassment and discrimination, and can help companies defend against such claims should they arise.

QUICKLY ADDRESS COMPLAINTS

Once an employer knows about any potential violations of company policies, or receives a complaint, it must take action and investigate. An investigation is essential to finding out more information and to defend against potential legal claims. While an investigation need not be completely flawless, it should be thorough and conducted by an appropriate investigator with sound methods. Employers then must be

ready to take action based on the investigator's findings and provide closure to the complainant and other parties involved.

Not all workplace romances cause workplace troubles. However, when they do, the strain on employers can be devastating. Employers should protect themselves with appropriate workplace policies, training, and investigations so that one scorned lover does not destroy an otherwise happy workplace. •

For over 15 years, **James Y. Wu** has advised and counseled employers ranging from less than five employees to Fortune 500 companies on employment law and HR issues. In January 2012, James established his own law office in Contra Costa County and he continues to provide day-to-day counseling to employers and a vigorous defense when companies are sued. James also started his three-year term on the CCCBA Board of Directors in January 2012. In 2008, James was the president of the Employment Law Section of the CCCBA and served on that Board from 2007 to 2012. James may be contacted at james@jameswulaw.com and www.jameswulaw.com.

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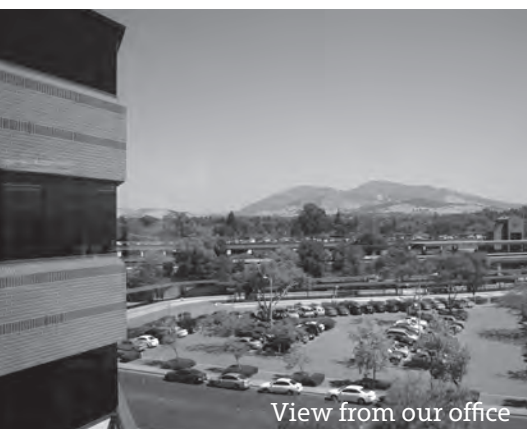
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