



San Bernardino County Bar Association

BULLETIN

Vol. 49, No. 5

Our 146th Year

March 2021

Honoring....

Honorable Michael A. Sachs

Commissioner Deborah A. Daniel
2020 Recipients

Kaufman Campbell
2020 • 2021

Honorable John M. Pacheco
2021 Recipient

An Online Event
Thursday • May 27, 2021
5:30 p.m. to 7:30 p.m.

Cover design by Sarah E. Powell

Save the Date!

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Official Publication of the San Bernardino County Bar Association

NEW DATE!

SBCBA'S BENCH-BAR GOLF TOURNAMENT IS BACK!

Join us for some long-awaited fun in the sun on

Friday, May 21, 2021

Registration at 11:30a

Shotgun Start at 12:30p

Held at the beautiful Arrowhead Country Club

***Please join us for the 20th Annual
SBCBA Bench-Bar Golf Tournament***

Our 20th Annual Bench-Bar Golf Tournament will be held on Friday, May 21, 2021 at the Arrowhead Country Club, located at 3433 Parkside Drive in San Bernardino.

We are looking for a few good - even not so good - golfers.

Each player will receive a goodie bag and box lunch to take onto the course - just before the 12:30pm shot gun start. Each players will receive a custom tourney mask to wear (in keeping with any current health guidelines).

We'll finish the day at an outdoor social gathering complete with cold drinks, buffet dinner, trophies, and an opportunity drawing with plenty of great prizes.

We are keeping our entry fees the same: \$150 per single player entry OR \$500 per team of four - save \$25 per player!

Tournament sponsorships available - Watch your email for the registration flyer!

Please join us this year on the green or as a sponsor!

Our tournament is a great way to meet, network, or play a round of golf with your judges and colleagues while supporting the SBCBA and its various community service programs, including Law Day, John Lewis King Memorial Scholarship Fund, our Lawyer Referral Service, MCLE programs for attorneys, and our Fee Arbitration Program. If you have any questions, please email us at bar@sbcba.org or call (909.885.1986) and ask for Claire or Barbi.



From the President's Desk

by Barbara A. Keough

Were those the days?

Whatever happened to those good ol' days? I've always considered myself a moderately progressive person. I welcomed the computer age and was one of those people who ran out to Radio Shack to get my first computer, well ahead of my friends and colleagues. I even had a dot matrix printer that printed forwards and backwards. Remember those? I didn't want to be left behind while the computer nerds took over the world.

Don't get me wrong: I am not a computer techie by any stretch of the imagination. I'm probably like about 80% of the population – I know how to operate my computer and function reasonably well with an electronic file. When my computer is stuck (that "circle of death" when the computer is "thinking"), I know how to do a soft boot. When a soft boot doesn't work, I'll hard boot. When that fails to fix the problem, I use my own boot and kick the machine. No, not really. I just go ballistic. Glitches didn't happen when I worked with a paper file.

I remember the days when legal research was done in the law library: I would open one book, pull out the Blue and White Shepard's to "shepardize" the case, then open up another book and set it on top of the first open book and so on, and so on. Legal research would take at least a couple hours, depending on my particular need. Now it's done with the click of a mouse. I can find practically anything anywhere.

I remember when meet and confers were done over the phone and not via e-mail. Discovery disputes were handled and resolved with one or two phone calls, not a series of e-mail exchanges and a flurry of letters followed by a lengthy motion. This electronic movement streamlines our system so that we don't use as much paper, that documents are exchanged almost immediately by the "send" button. However, that streamline process is fraught with a host of setbacks.

I miss the one-on-one phone calls. I miss the hearty handshake at an awards dinner or other legal-oriented banquet. I miss the hallway chats with colleagues as we check in for our regular court appearances. Those were opportunities to engage in a friendly meet-and-confer, to discuss our cases with one another, to bounce ideas off of colleagues, and basically to touch base with the legal public.

The days are fast approaching for us to resume face-to-face meetings with each other as this world edges towards herd immunity from this crazy virus. But, will we ever return to "baseline," i.e., how things were done pre-COVID? We will still be advocates for our clients. We will probably still have our discovery disputes. We will still need to mediate with adverse counsel.

Face-to-face confrontations are sometimes uncomfortable; however, so much can be accomplished if we simply pick up the phone and engage in the art of conversation. It tells the other person that they are important and worthy of a personal conversation with you. This is not a new concept, but a return to a traditional practice of courtesy and professionalism.

"Just try new things. Don't be afraid. Step out of your comfort zones and soar." Michelle Obama

The San Bernardino County Bar Association's Lawyer Referral Service...

needs additional panel members!

We have a need for qualified panel members practicing in the following fields of law: Landlord-Tenant Law (tenant) and Juvenile Dependency Law. We also need attorneys located in the High Desert areas who practice Criminal Defense and Family Law.

Please call Barbi Lines at (909)885-1986 or send an email to barbara@sbcba.org.

FROM THE DESK OF THE PRESIDENT OF THE HON. JOSEPH B. CAMPBELL AMERICAN INN OF COURT

By Susan B. Grabarsky



Did you know that in English courts you can tell the barristers from the judges by the size of their wigs? Barristers wear short wigs. Judges are literally “the big wigs” in the courtroom. This fun fact drew the most laughs at December’s virtual meeting of the Campbell Inn of Court, but it was far from the most interesting thing we learned about the modern English legal system. Barrister Barry McAlinden, our guest speaker, candidly discussed aspects of legal education, training, and everyday practice in England and Wales. The differences in the business aspects of legal practice were the most remarkable. For example, barristers do not advertise or discuss payment for their services; such matters are left to their clerks and, in certain types of cases, to solicitors. Barristers in independent practice operate within the framework of a set of chambers, which are very different from the private practice partnerships we have in this country.

Despite the challenges of conducting our meetings remotely—or perhaps because of them—the 2020-2021 Inn of Court year has, thus far, been fascinating. Our speakers from all over the world provided an eye-opening “International Perspective on Legal Ethics, Civility and Professionalism.” Our members and guests were treated to frank, down-to-earth discussions of our profession as it is practiced in other countries and by other cultures.

Our guest speakers included Ms. Beenish Haider, Mr. Serkan Ictem, and Mr. Paulo Doninelli, all highly-respected lawyers with experience practicing in multiple jurisdictions and foreign countries. They gave us introductions to the legal profession in Pakistan, the United Arab Emirates, Turkey, and Costa Rica.

Our members who are estate planning and probate specialists gained an appreciation for the complexity of Sharia law in the United Arab Emirates, where a Muslim testator can only devise up to one-third of his or her estate by will. The employment lawyers of our Inn were taken aback upon learning that, under Turkish law, there is no such thing as at-will employment; termination of an employee must be a last resort after first trying to train, rehabilitate, or change the employee’s duties. Further, in civil law countries such as Turkey and Costa Rica, there is no right to a jury in court proceedings. A trial is presided over by a judge or by a three-judge tribunal, depending on the nature of the dispute or criminal allegations. Some of our Inn’s many judicial masters were surprised to learn that in Dubai only natural-born citizens can practice law in a courtroom, but a judge can be of any nationality. And in Pakistan a retiring judge can only practice law in courts of a higher authority, which means that a Pakistani Supreme Court judge cannot practice law after retiring.

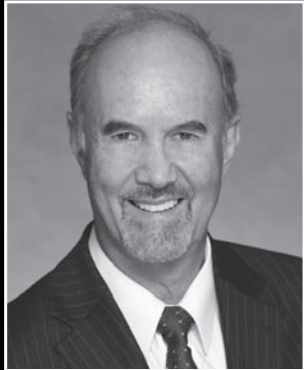
We often think of fostering excellence in our profession, which is one of the goals of the American Inns of Court, within the context of our own legal community. This year’s slate of programs helps us see how our profession fits into a global context, across different cultures, as we learn about the legal systems of other countries. The respect with which our speakers discussed their dealings with attorneys and judges in foreign jurisdictions allowed our members to witness how much can be accomplished in a court of law even when those involved in the case do not share a common legal system, body of law, or language.

We invite you to join us in the coming months as we discuss the legal systems of Nigeria, India, and France—places many of us would love to visit in person, but for now can only do so virtually. It is an opportunity to learn something new while earning MCLE credit.

The American Inns of Court is an organization of judges and lawyers with the collective goal of advancing the rule of law by achieving the highest level of professionalism, civility, and ethics. The Hon. Joseph B. Campbell American Inn of Court based in San Bernardino County is a nationally-recognized, award-winning Inn that has achieved Platinum-level status, the highest honor in the Achieving Excellence Program of the American Inns of Court. To inquire about membership, please contact Susan Grabarsky, President, at [Susan@DarrasLaw\[dot\]com](mailto:Susan@DarrasLaw.com) or Jesse Male, Membership Chair, at [JesseMale@RivCoDA\[dot\]org](mailto:JesseMale@RivCoDA.org).



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Robert M. Cohen, Esq.
Mediator/Arbitrator

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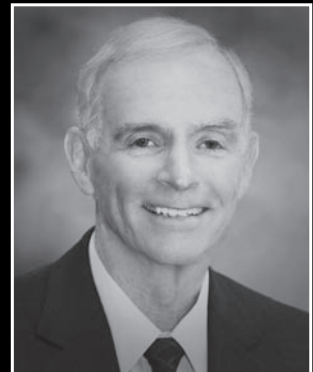
**Lori Carver
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CLICK ON THIS FLYER TO REGISTER!



LIVE CLE WEBINAR
How to Find and Use
Location Information in Litigation

Speaker: Brian Chase, Director of Digital Forensics

Minimum Legal Credit: 1 Hour
March 16, 2021 - 12:00 PM, Pacific Time

CLICK HERE TO REGISTER:

https://us02web.zoom.us/webinar/register/WN_EefJ3e3hROe2msfqqECQ7g

>>> Do not use Internet Explorer to register or watch the webinar <<<

Determining the location of an individual at a specific point in time can make or break a case. You can use location data to present an alibi defense, discredit a witness or party, show how long someone was on the road prior to a crash, establish where a digital contract was signed, and more. This unique webinar will show you how to find and use location data in your case. We will answer your pre-submitted and live questions, as well as walk-through real-world location analysis. You will come away knowing where to find data to support your case as well as how to analyze some of the data yourself.

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State Bar Seeks Applications for 2022 Commission on Judicial Nominees Evaluation

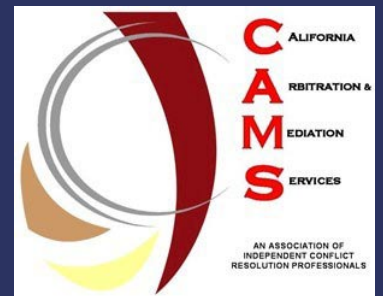
The thirty-eight-member Judicial Nominees Evaluation (JNE) Commission, established pursuant to Government Code section 12011.5, evaluates all candidates who are under consideration for a judicial appointment by the governor. The JNE Commission is comprised of lawyers in active practice, one or more retired judicial officers, and public (nonlawyer) members. Commissioners serve terms of approximately one year and may serve up to three consecutive terms. The State Bar seeks applications from individuals whose background, skills, and experience would enable them to assess candidates for judicial appointment in a thorough, objective, and professional manner and to provide timely and well-written reports, while maintaining a code of strict confidentiality. There are currently 12 vacancies for the 2022 Commission.

Time Commitment: Six meetings (two days long) per year alternating between San Francisco and Los Angeles State Bar offices (now being held by Zoom), in addition to a mandatory two-day orientation meeting to be held January 28–29, 2022, and 40 hours of investigation/evaluation work per month.

For access to the Appointments application and for information on the overview of volunteer opportunities at the State Bar including detailed descriptions of the committees with vacancies, please visit the following links:

1. [Appointments application](#)
2. [Overview of volunteer opportunities](#)
3. [Detailed descriptions](#)

If you have any questions, please contact the Appointments Office by phone at 415-538-2370 or email at appointments@calbar.ca.gov.



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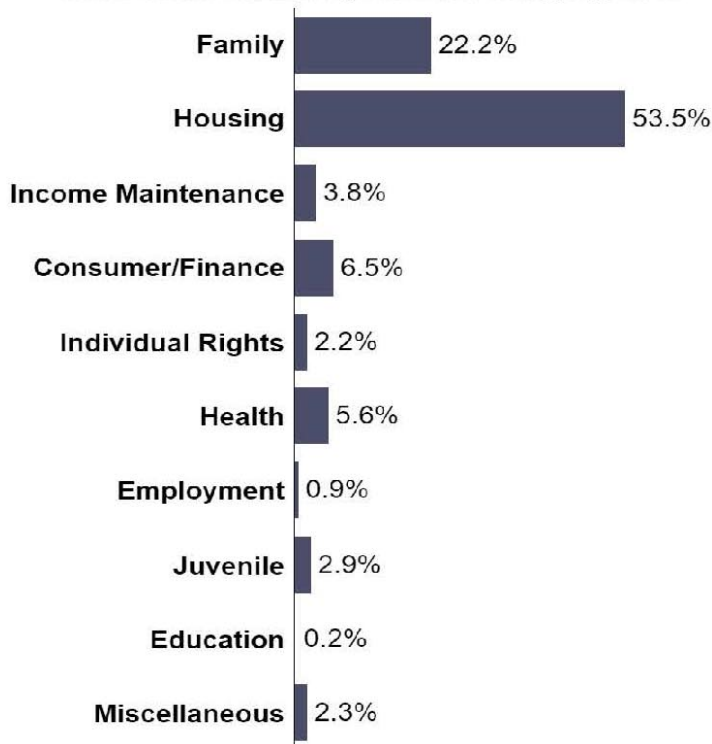
Luis E. Lopez

ICLS | INLAND COUNTIES LEGAL SERVICES, INC.

Inland Counties Legal Services (ICLS) is a publicly funded nonprofit corporation that provides free civil legal services to people who cannot afford to pay an attorney as well as to seniors in both San Bernardino and Riverside counties. The work that is undertaken by ICLS staff is broadly determined by the ICLS Board of Directors as expressed in the Board’s annual adoption of “program priorities.” The program’s priorities are based upon our best understanding of the community’s needs. As a publicly funded entity, it is our responsibility to ensure that the services we provide are consistent with the expectations and needs of the community. As a result, ICLS is undertaking a robust “needs assessment.” As a member of the SBCBA living or working in our service area, your opinion matters to us. Below is an outline of the types of cases we worked on in 2019.

This is what we did in 2019!

Total Cases Closed by Problem Category, 2019



Did we get it right?

Within the next 30 to 45 days you will be receiving an email with a short survey asking for your input – please take the time to respond. We are grateful for and value your input.


Darrell Moore (Feb 12, 2021 13:49 PST)

Darrell K. Moore, Esq. Executive Director
 Inland Counties Legal Services, Inc.



Obtaining Great Results For Our Clients, One Case at a Time

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Ruben Lopez ★★★★★



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What's On the Horizon for Law Firms in 2021?

by Sharon D. Nelson, Esq. and John W. Simek

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Jim Calloway, Director of the Oklahoma Bar Association's Management Program, frequently speaks with us about the future of law. Recently, Jim recorded a Legal Talk Network podcast with Sharon which bears the same name as this article. You can find the podcast at <https://legaltalknetwork.com/podcasts/digital-edge/2020/12/whats-on-the-horizon-for-law-firms-in-2021/>.

The authors continue the discussion below.

We were glad to see the backside of 2020. But 2021 carries many uncertainties with it and that makes predictions risky. Fortunately, we are not averse to risk-taking and it is a worthwhile effort to make predictions, especially about things we're fairly certain will come to pass.

One thing that both lawyers and clients seem to have changed their minds about is the importance of physical office space. Until we read the Clio 2020 Legal Trends Report which surveyed a combination of Clio users and non-Clio users, we had no idea that 21% of law firms were already operating without commercial office space and since the pandemic, another 7% of lawyers have given up their commercial offices and 12% are unsure they'll keep them going forward.

It's a pretty good bet that those numbers are higher today. We have heard from some of our big law friends that they are actively looking to sublet some of their space. Those that were near the end of their leases were the lucky ones because they can negotiate for downsized space. We, on the other hand, signed a five-year lease in February 2020. Great timing, huh?

We may also see rotating offices (yes, there will be institutional resistance), where lawyers showing up to work get assigned to an office with the office space rotating among the firm's lawyers. Large, luxurious partner offices may also become a thing of the past. The physical footprint of the office may be reduced but virtually everyone seems to agree that firms of a certain size need some kind of office in which to conduct meetings, have a receptionist to deal with mail, packages, etc.

Another topic that comes up frequently is the cloud. We've been saying for a very long time that the cloud protects the security of law firm data better than the lawyers would and that is so true. We regularly hear stories of cloud breaches but lawyers often misunderstand their cause. The majority of those breaches are caused by users who misconfigured the security of the cloud and their presence in the cloud.

Recently, we've begun to say that the best time to move to the cloud was five years ago and the second-best time is today. Clio CEO Jack Newton has said that if you're not in the cloud, you're not in the game. He calls the cloud table stakes, which we thought was a very interesting term. Also of note is the ILTA 2020 survey where the majority of respondents said, with every upgrade, they were going to the cloud. So, it's a staged process but it's in place for every upgrade.

In the beginning of the pandemic, those lawyers that had all their data in the cloud were way ahead of those who still had all their data locked in physical files. If your files were in the cloud, you could work. You weren't stuck with lugging files back and forth from the office.

We worry sometimes that lawyers are rearranging the deck chairs on the Titanic because they've been holding on to the past so much, not adapting to the future. We did see a lot change caused by the pandemic and we're hopeful that we will continue to innovate. Lawyers need to take a look at what they've always done and say, "Is this what we always should do? Is there a better way?" The seven most dangerous words might be "But we've always done it that way."

Cybersecurity has been a huge issue and will continue to be. The pandemic has been a nightmare of people calling and saying, "We're down, we're down, we're down. We've got a ransom that we're supposed to pay. What is all this about? What do we do?"

It was clear that there is not a lot of incident response planning going on because any incident response plans they had (if any) were just frozen in time, never updated. Cyber criminals of course are always sniffing for new opportunities

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and we certainly gave it to them with our new work from home environment. We saw more than a 750% rise in ransomware in the first six months of 2020 and home networks are about three and a half times more vulnerable than law firm networks. Using home machines rather than work-issued laptops that we bring home that are secured by the law firms – well, those home machines just complicate the problems.

As a result, one change we are seeing is that law firms are warming to the idea of making sure that all devices connected to the law firm network must be owned and secured by the law firm. That's one trend we are sure will continue.

We have fond memories of the days when a thousand dollars was a big ransom. Seems like a long time ago. In the third quarter of 2020, the average cost of ransomware was approximately \$233,000 according to the cybersecurity and ransomware specialist firm Coveware.

Law firms are getting hit left and right among many other entities and, of course, recently, we've had government agencies and others hit in the SolarWinds attack which seems to be more about espionage than it does about ransomware.

With law firms, we now have the double ransom where the bad guys steal your data before they encrypt it. If you're able to recover from backups without paying the first ransom demand, you will then get a second ransom demand for supposedly destroying your data and, of course, since we always trust cybercriminals, paying the ransom is often what we do. We pay them and trust them that our data has been deleted. When they make the demand, they will send you samples to show you that they have the data or they'll post them on the dark web to scare you into paying. If you chose to pay for the decryption key in the beginning, you may still get that second ransom demand.

Insurance companies are often choosing to pay the ransom rather than pay for an extended business interruption and possibly the costs associated with the theft of the data. So, as of the end of 2020, fully 25% of victims today were paying ransoms.

We saw a 75% increase in business email compromise in the first three months of 2020, but the whopping great statistic was that we then saw a 200% increase each week from April to May. We have to assume that this means that cyber criminals are having a great degree of success using these compromised accounts.

Worse yet, once the criminals have all of your email, your contacts, your calendar, et cetera, you can't do anything about that. That horse has left the barn. What everyone should do is have multi-factor authentication which prevents 99.9% of business email compromise attacks. Wherever you can, you should enable MFA. It's almost everywhere these days. But it's a matter of security versus convenience because lawyers don't want to have to enter a text code from their phone. If you can block 99.9% of these attacks, focus on security instead of convenience. Microsoft itself thought it was so important that they made MFA free.

Yes, most lawyers are afraid they'll have to enter a code from their smartphone, on their laptop or other device, but in most cases, that's not true. It might be true of your doctor's office. It might be true of your bank or your stockbroker but most of the time, you can make your devices "trusted devices" so that no code is needed unless you buy a new device, you change your password or perhaps you're visiting someone and using their device for some reason.

Recently, we're trying to move people away from text messages because SMS text messages can be so easily compromised. But if that's all you have, it's infinitely better than nothing. Authenticator apps and authenticator tools are what's going to replace both two-factor authentication and multi-factor authentication. There are actually hardware tokens like Yubico's YubiKey line or CryptoTrust OnlyKey where you have a physical thing you carry on your key ring or in your purse and it plugs into either your USB-A slot or USB-C slot or Lightning for iPhone users.

Most people are going to prefer the software tokens - Microsoft authenticator, Google authenticator, etc. These apps constantly generate new codes that are only valid for about 30 seconds, so when you log into an account and you're prompted for a code, you just open your app and enter that most recent code and you're good to go.

Obviously, there's a lot of change in cybersecurity.

But let's go back to the daily business of law.

Some things are going to stick post-pandemic. Virtually all law firms now do electronic contracting, most using DocuSign (our preference) or AdobeSign.

Every lawyer now knows about e-notarization, which they didn't before. People who didn't have case management software are getting it and recognizing the value of secure client portals. Clients love the security of client portals where they can go in anytime and see their documents, review/pay their bills, etc. This has become part of being a client-centric law firm.

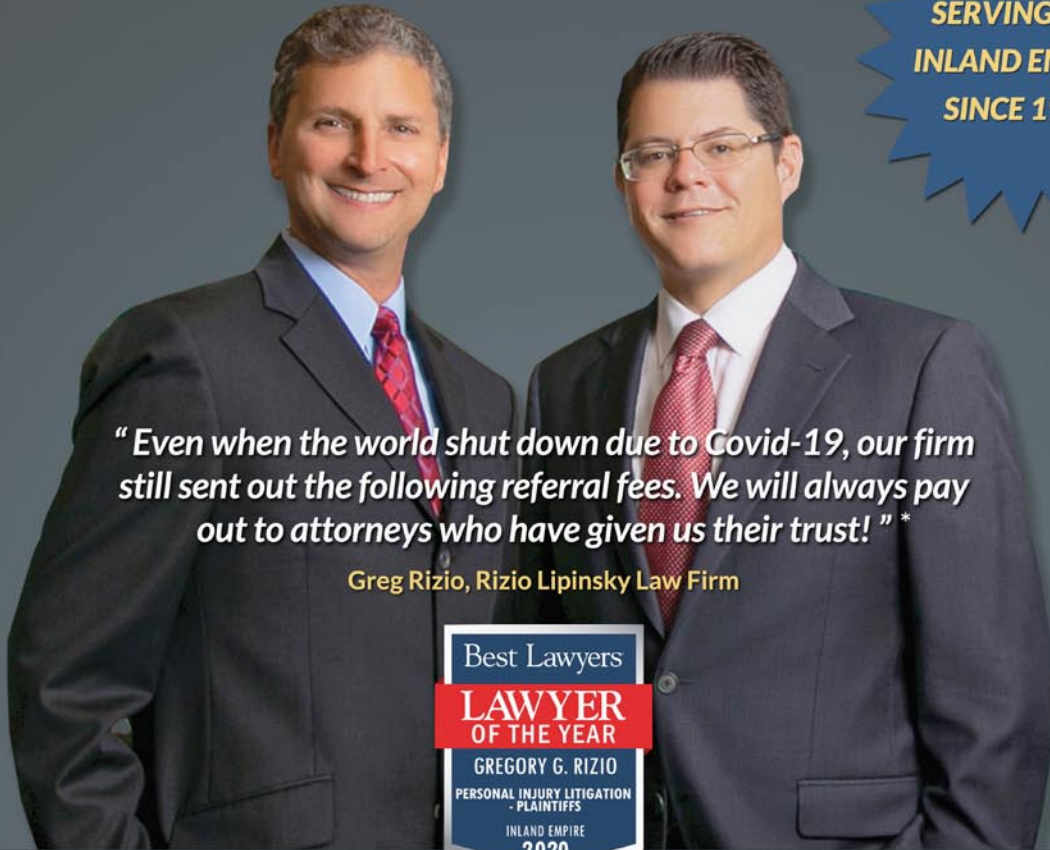
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RIZIO LIPINSKY

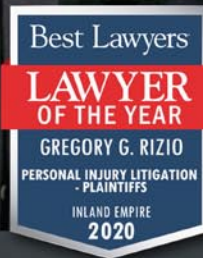
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There are still an amazing number of lawyers who refuse to accept credit card payments. We've never understood that because 40% of consumers, according to one of the Clio surveys, would never hire a lawyer who didn't take debit or credit cards. We've accepted credit cards for a very long time, but the pandemic caused cash flow to slow (slow mail delivery may have been a part of that). We began emailing our clients asking those who were writing checks to shift over to credit card payment. We immediately saw a marked increase in people paying promptly and the cash flow is much more dependable. It is critical these days to send out bills electronically with a payment link.

The thing that we are most certain will stick is the dependence on video conferencing. Yes, we'll go back to in-person meetings and courtrooms again, but now that the legal world and even the judicial world has learned to use virtual conferencing software, we doubt that we'll ever totally go back to our old ways. Too much money and time is saved by meeting clients via Zoom (the clear winner of the video conferencing software wars) – the same is true of court proceedings.

There are drawbacks of course. Some things are just better in person – when you can look a client or opposing counsel in the eye, you may “read” them better – and you may be more persuasive in-person. There are trade-offs and we're still figuring out what works when.

Clients are totally sold on video conferencing – they don't want to be waiting in your well-appointed reception area, which they are now keenly aware that they are paying for. They don't want to travel to your office. They don't want to take time off from work. Clients and prospective clients all seem to have mastered Zoom – at least its fundamentals – so we doubt it will lose its dominance no matter how many of its features are imitated by its competitors.

Finally, we are seeing artificial intelligence being adopted more rapidly by firms of all sizes and that's likely to be a continuing trend in 2021. Could it be unethical NOT to use AI? We just read an article with that title. The answer is yes!

Though there are several ethical rules which may be implicated, notably a lawyer's failure to use AI could implicate ABA Model Rule 1.5, which requires lawyer's fees to be reasonable. If AI reduces costs, limits risks and is much faster, not using AI may result in a lawyer charging an unreasonable fee to a client.” We are seeing more and more lawyers, even in small firms, beginning to use AI in e-discovery, legal research, contract analytics, predictive analytics, document management and expertise automation, among many other arenas.

These are just some of the changes that law firms will see in the future. Nothing is more worthwhile to the thoughtful lawyer than to constantly scan the horizon for changes that can enhance the successful practice of law. If there's any silver lining to the pandemic, it is that it has shaken the legal world up and brought it years into the future.

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. snelson@senseient.com.

John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional, Certified Ethical Hacker and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com

The San Bernardino County Bar Association's Fee Arbitration Program...

is seeking additional (temporary) arbitrators.

Due to a recent increase in fee arbitrations the SBCBA Fee Arbitration Program is asking for volunteer attorneys with arbitration experience to hear attorney-client fee disputes on a limited basis.

If you are interested, please contact Claire at (909)885-1986 or email claire@sbcbca.org.



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