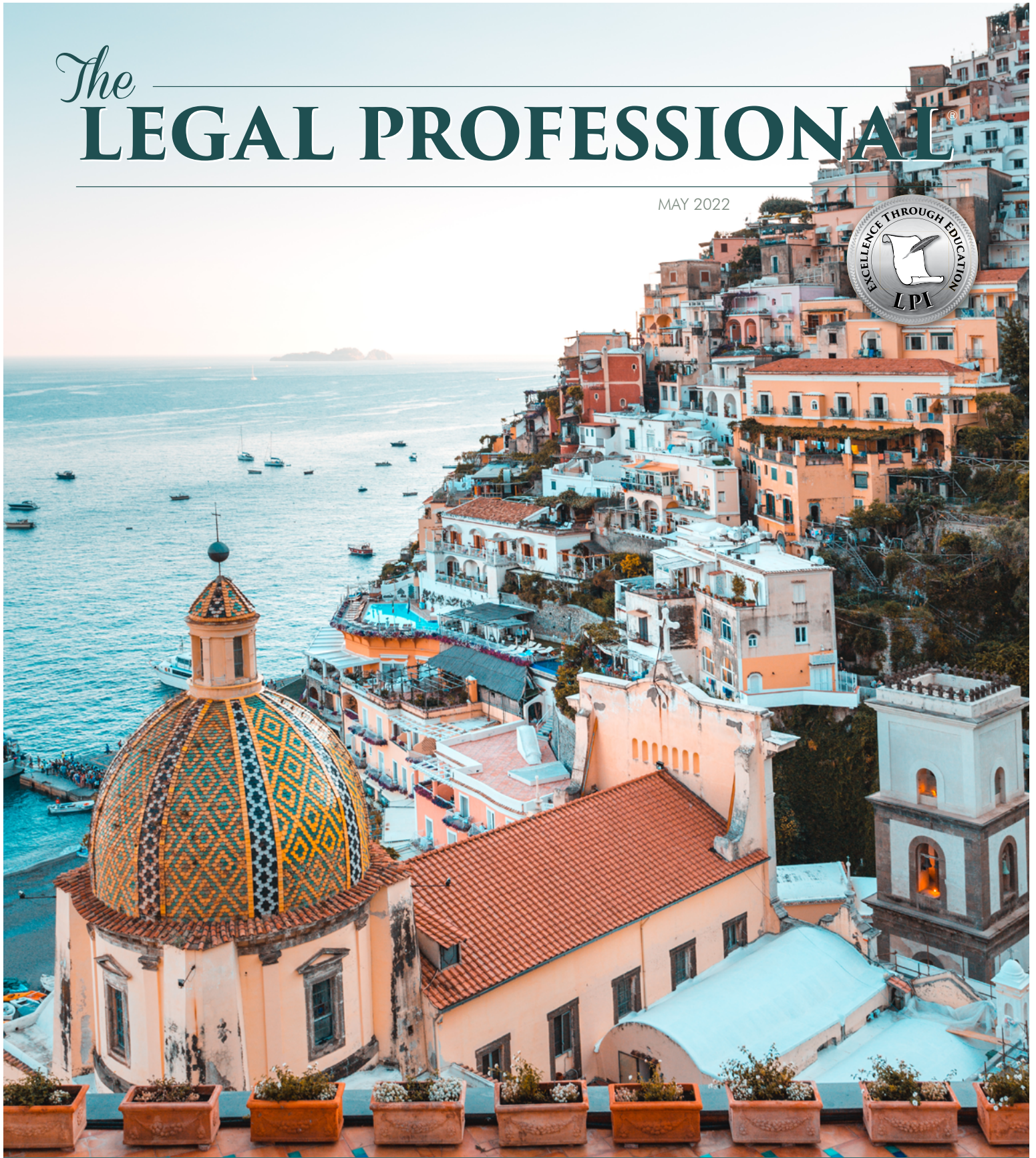


# *The* LEGAL PROFESSIONAL<sup>®</sup>

MAY 2022



## "WEEKEND IN ITALY" – LPI'S 88TH ANNUAL CONFERENCE OF DELEGATES AND BOARD OF GOVERNORS MEETING

By Vivian Shreve, CCLS and M'Liss Bounds  
Page 12



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*Dedicated to LSI Past President,  
Joan M. Moore, PLS, CCLS*

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### LYNNE PRESCOTT, CCLS,

is LPI's President, and a member of Sacramento Legal Secretaries Association. She first became a member of LPI in 1990 while working as a legal secretary in Fairfield, CA. She currently works at the office of Messing Adam & Jasmine in Sacramento. Lynne is a two-time past president of both Solano County LSA and Sacramento LSA, and obtained her CCLS certification in 2013. She resides in Yuba City with her husband, Randy, and four fur-babies, and is a proud mother and grandmother.



# PRESIDENT'S MESSAGE

## Our Finest Hour

BY LYNNE PRESCOTT, CCLS

I believe that people come into our lives for a reason, and that things happen for a reason. I believe that we are led to those who help us most to grow if we let them, and that we help them in return. It's what inspired the theme for my presidency, "Elevate: The Purpose, The People, The Profession." When that theme came to me, I had no idea it would be more than words of inspiration - it would be a challenge to every single day of the past two years. I also had no idea how

much we would need each other and how much we would learn from each other.

There are those who say that I didn't have the kind of presidency I deserved, that I got short-changed because of the pandemic. I disagree. I believe this has been my (and LPI's) finest hour.

Winston Churchill said, during his famous speech "Their Finest Hour," to the House of Commons on June 18, 1940:

"Upon this battle depends the survival of Christian civilization. Upon it depends our own British life, and the long continuity of our institutions and our Empire. The whole fury and might of the enemy must very soon be turned on us. Hitler knows that he will have to break us in this island or lose the war. If we can stand up to him, all Europe may be free and the life of the world may move forward into broad, sunlit uplands. But if we fail, then the whole world, including the United States, including all that we have known and cared for, will sink into the abyss of a new Dark Age made more sinister, and perhaps more protracted, by the lights of perverted science. Let us therefore brace ourselves to our duties, and so bear ourselves that if the British Empire and its Commonwealth last for a thousand years, men will still say, 'This was their Finest Hour.'"

The term "Their Finest Hour," has even been defined by Wikipedia as "a point in time or a relatively brief period of time when an especially distinguished, admirable, or effective set of actions is performed."

The pandemic presented me and the leaders of LPI with a choice. We could either inspire the members through action or leave them paralyzed in the face of seemingly overwhelming odds. Rather than view the challenges of the pandemic as barriers, we viewed them as opportunities. And so, as Churchill said, we "braced ourselves to our duties," and declared that "we shall

never surrender." We distinguished ourselves with an "effective set of actions" never performed before.

We immediately increased the number of educational programs available online and offered coaching and advice for working remotely. We took to virtual platforms such as Zoom for holding meetings, both at the LPI and the local association level. We constantly kept our members apprised of the numerous Executive Orders from the courts, local government, and the State, all of which affected the practice of law and the administration of justice.

Continued on page 3 ➔



← Continued from page 2

Additionally, the following accomplishments in what has not even been a full two-year term have accelerated LPI as a corporation:

- Corporation Name Change and Magazine Name Change
- Creation of The Legacy Project
- Local Association Promotion & Assistance with Educational Programs
- Establishment of "The Podium" Blog
- Addition of Tech Committee as a Separate and Permanent Committee
- Launch of the "Eye on LPI" Video Series
- Unprecedented Support and Interaction of Local Associations With Sister Associations
- First FREE Quarterly Conference
- Complete Social Media Coverage, Plus the Addition of You Tube Channel
- Addition of Webinar Team as a Separate, Permanent Committee
- Creation of LPI "IMPACT Mentoring Program"
- Steady Increase in Publication Royalties
- Livestreaming of LPI Conferences
- LPI Scholarships Now Available to LPI Members
- Joint Venture Partnership with First Legal
- Establishment of "LPI 101" Training Series for Local Officers and Chairmen
- Expansion of LPI Store for Branded Merchandise and Educational Material
- Conference Partnering Program with Local Associations
- Streamlined Board of Governors Meetings
- Digital Membership Cards

- CEC - - Addition of Trial Preparation and Advanced Discovery Online Courses; Addition of Legal Technology Training Instructor; Update to BLST Content to New Platform; First Revision to the Legal Secretary's Reference Guide since 2019
- LSS - - Established Virtual "Day of Education" to Ensure Continued Legal Specialization Section Seminars; Resumption of Live Seminars in November 2021
- PRC - - Continued Increase in Royalties; Launch of Softbound Law Office Procedures Manual
- CCLS - - Established First CCLS Exam Administered Entirely Online; First Exam Held in Nearly Three Years; 13 New CCLSs as of November 2021, With More Expected After the March 2022 Exam

This level of elevation would be extraordinary even for pre-COVID years. The fact that it occurred during a global pandemic that has threatened our very existence is monumental! I cannot thank the Executive Committee, Appointed Officers, Chairpersons, LSS Leaders, PRC Assistant Editors, CCLS Certifying Board, and Marketing Committee enough for their exemplary leadership, determination, and drive. Neither I, nor LPI, could ask for a more outstanding group of leaders.

And there is more to come. President-Elect Rod Cardinale, Jr., has an exciting agenda for his presidency and leadership team that will continue to fuel the current momentum and further elevate LPI as the go-to resource for legal professionals in California.

Thank you for the honor of serving you. Every day as President of Legal Professionals, Incorporated, you have made me proud to be a legal professional and proud to lead this organization. I am immensely grateful for your kindness, care, support, encouragement, and friendship. Thank you for walking alongside me, but more importantly for working shoulder-to-shoulder with me to elevate our purpose, our people, and our profession during the most difficult time in this organization's history. Your dedication to our mission and purpose, endless resourcefulness, inspiring ingenuity, unfailing commitment, strength of heart, and indomitable spirit are part of our great legacy. You are truly standing stones for those who are to come, "so that the world may know." It has been such a privilege for me to know you and to serve you. This has, indeed, been "Our Finest Hour."

Warmly,





**LEGAL  
SPECIALIZATION  
SECTIONS**

**USDC  
NORTHERN  
DISTRICT**

**6/2/22**

**SAN DIEGO  
SUPERIOR  
COURT**  
**7/14/22**

**LOS ANGELES  
SUPERIOR  
COURT**  
**8/24/22**

**USDC  
SOUTHERN  
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# THE LPI IMPACT MENTORING PROGRAM

BY LYNNE PRESCOTT, CCLS

February 2022 Quarterly Conference, LPI introduced its new IMPACT Mentoring Program. It is the first of its kind for LPI and is designed to foster the next generation of legal professionals. The program connects experienced legal professionals with others in various stages of their legal career who can offer guidance in every aspect of professional and personal development, while emphasizing the importance of giving back and paying it forward. The goal is to learn from and support each other in our career paths, as well as have fun.

## Why Be a Mentor?

- Nobody did it on their own.
- Everyone remembers navigating the beginning stages of their legal career, how it feels when you're thrown into a new practice area, and how important mentors are for our development.
- A mentor's small investment can yield a lifetime of rewards, not just for the mentee, but for the mentor as well.
- Not only can you help ensure the continuity of a successful legal community, but you also have the opportunity to instill the importance of continuing education, the need to invest in oneself, and the value of giving back.
- You also make lifelong friends and increase your own professional network.
- It's never too late to become a mentor!

## Why Be a Mentee?

- Asking for and allowing support is the new "strong."
- Having a mentor proves your hunger for new things.
- Gain invaluable advice, guidance, and perspective.



Investing in yourself & others

Making a difference

Paying it forward

Advancing the profession

Continuing the legacy

Transforming lives

- Benefit from roads already traveled and paths already blazed.
- Success in the legal profession is a moving target that expands with time, experience, and proper guidance.
- By learning from a legal mentor who has already tread the path you're on, you can streamline and strengthen your personal and professional development.
- Knowing your development area makes you invincible!
- How Do You Find the Right Fit?
- Ask questions.
- Establish goals.
- Communicate clearly.
- Define expectations.

It's essential to think about these factors from the start. This way, you can maximize your experience without either of you wasting valuable time. Both you and your mentor can establish a more productive relationship if you enter into it with a clear goal for what you hope to achieve.

## Paying It Forward

While there's much to gain from having a mentor, we also emphasize the importance of paying it forward. Becoming a mentor as you move through your career is one of the greatest ways to make an IMPACT so you can give back, carry on the legacy, and help others become the best versions of themselves.

## IMPACT

Our purpose is to make an IMPACT that matters. Are YOU ready to make an IMPACT?

For more information on how you can be a part of the IMPACT Mentoring Program, either as a mentor or a mentee, please contact Lynne Prescott, CCLS, at [slprescott7@gmail.com](mailto:slprescott7@gmail.com).

# WAGE AND HOUR VIOLATIONS CAN LEAD TO STEEP PENALTIES UNDER CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT

BY JENN PROTAS, ESQ. AND MAYSA SAEED, ESQ. – SUBMITTED BY SANTA CLARA COUNTY LPA

In 2019, California collected over \$88 million in PAGA penalties from employers.<sup>1</sup> The Private Attorneys General Act ("PAGA") authorizes employees to file lawsuits to recover civil penalties—which are otherwise only recoverable by the State—on behalf of themselves, other employees, and the State of California for Labor Code violations. PAGA penalties can quickly accumulate given the many possible Labor Code violations and the fact that penalties accrue for each violation (per pay period), which means that employers who do not realize they are doing something wrong and face more liability as time goes on. This article shows how PAGA penalties for common wage and hour violations are calculated and compares them to class action damages so that the reader can assess potential exposure for wage and hour violations.

## Wage and Hour Class Actions vs. PAGA Lawsuits

PAGA lawsuits have similarities and differences to wage and hour class action lawsuits, and plaintiffs may assert both:

### Wage and Hour Class Actions

One employee can bring a class action on behalf of other employees.

Requires class action certification to ensure the class representative adequately represents the proposed class. This is a big procedural hurdle for plaintiffs to overcome.

Requires that the plaintiff suffered a typical and common violation similar to the other members.

Damages are owed to employees for the violations they suffered.

Statute of limitations for most wage and hour violations is four years .

### PAGA Lawsuits

One employee can bring a PAGA claim on behalf of other aggrieved employees.

Class action certification is not required, but plaintiffs must exhaust their administrative remedies by first notifying the State of the violations to give the State the opportunity to address the violations itself.

The plaintiff can sue on behalf of other employees who suffered different violations than those suffered by the plaintiff so long as the plaintiff suffered at least one violation.

Civil penalties are assessed for violations of the Labor Code; 75% of the penalties go to the State, and 25% are paid to the aggrieved employees.

Statute of limitations is one year.

## LWDA Letters and PAGA Claims

Prior to commencing a PAGA action, the employee must provide written notice to the Labor and Workforce



Development Agency ("LWDA") notifying the LWDA of the alleged violations in writing, a copy of which is also sent to the employer. The number of these PAGA notices the LWDA received each year has significantly increased, from 4,000 in 2014 to what is expected to exceed over 7,000 filings in 2022.<sup>2</sup> For more information about what to do if you receive an LWDA letter and how to "cure" (i.e., fix) certain violations, please refer to the article, *"So You Were Copied on an LWDA Letter – What Do You Do?"*

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## How Are PAGA Penalties Calculated?

PAGA penalties are calculated using a two-step process:

**Example Scenario:** Non-Compliant Wage Statements (e.g., non-itemized deductions) for 50 employees for one year (26 pay periods)<sup>3</sup>

### Steps:

- 1) Determine the number of Labor Code violations within the statutory period.
  - 50 employees x 26 pay periods = 1,300 violations
- 2) Determine the appropriate penalty (see below).
  - PAGA penalty for non-compliant wage statements is \$250 for each employee per pay period for the initial violation and \$1,000 for each employee per pay period for any subsequent violations.
  - $1,300 \times \$250 = \$325,000$

## Determining the Civil Penalty

The Labor Code may or may not provide a specific civil penalty for the violation.

If the Labor Code already provides for a civil penalty for the underlying violation, the employee can sue to recover that penalty on behalf of similarly aggrieved employees and the State. This includes when an employer:

- unlawfully withholds wages or fails to make timely payments (\$100 for the initial violation and \$200 for subsequent violations);
- violates Wage Orders regulating hours and days of work (\$50 for the initial violation and \$100 for subsequent violations);
- fails to include all required items on an itemized wage statement (\$250 for the initial violation and \$1,000 for subsequent violations); or
- fails to pay minimum wages (\$100 for the initial violation and \$250 for subsequent violations).

When the Labor Code does not already provide a civil penalty, the PAGA "default" penalty is \$100 for each employee per pay period for the initial violation and \$200 for each employee per pay period for each subsequent violation. Claims that fall under the default PAGA penalty include:

- missed meal and rest break premiums;
- expense reimbursements;
- unpaid overtime; and
- waiting time penalties.

## Subsequent Violations

When PAGA was first enacted, plaintiffs argued that if an employee missed a meal break at least one time per pay period, for example, over the course of 26 pay periods, there is one "initial violation" and 25 "subsequent violations." However, it is generally accepted now that for "subsequent violations," employers must have notice of a violation for the heightened penalty to apply. Therefore, until an employer has such notice, in our example, each pay period with a non-compliant wage statement would be an "initial violation." What constitutes sufficient notice triggering the heightened penalties is not clearly defined. Some courts have held that notice generally must come from a court or some enforcement authority (e.g., the Labor Commissioner). But it is unclear whether there needs to be a finding of a violation (after a trial or administrative hearing) or whether simply being notified of an allegation of wrongdoing is sufficient. If you receive correspondence from a court or other enforcement authority indicating potential Labor Code violations, please consult with legal counsel to discuss its implications and next steps.

## Multiple Violations in a Pay Period

It also remains unsettled as to whether PAGA penalties for multiple violations in a pay period can be added together, also known as "stacking." For example, 50 employees who receive non-compliant wage statements (e.g., non-itemized deductions) and were not paid five hours of overtime per pay period (30 minutes of overtime per workday) over the course of a year (26 pay periods) may be able to claim penalties on the basis of potentially *two separate violations per pay period*: one violation for each non-itemized wage statement and one for unpaid overtime per pay period. In this case, the penalty calculation could be:

- 1 violation (non-compliant wage statement) x \$250 penalty x 26 affected pay periods x 50 aggrieved employees = \$325,000
- 1 violation (unpaid overtime) x \$100 penalty x 26 affected pay periods x 50 aggrieved employees = \$130,000

Total:  $\$325,000 + \$130,000 = \$455,000$

As evidenced by this example, PAGA penalties can quickly accumulate.

## Individual Damages in Addition to PAGA Penalties

Employers should also be aware that in addition to PAGA penalties (which the plaintiff is ostensibly asserting on behalf of the State), plaintiffs may seek individual damages to compensate for any unpaid monies owed to the employee. Plaintiffs can assert those individual claims on behalf of themselves, or they can also assert them as a class action on behalf of similarly situated employees.

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If the plaintiff filed a class action in addition to a PAGA action, the potential exposure to the employer would increase. Moreover, for such claims:

- the statute of limitations is generally four years;
- damages are measured by the number of violations that occurred rather than by the pay period.

Taking the same example (50 employees who did not receive compliant wage statements and were not paid 30 minutes of overtime per workday who were each paid \$25 per hour) and assuming these violations occurred over the course of four years, the class action liability could be \$1,102,500:

## Unpaid overtime

- 4 years x 52 weeks per year x 5 workdays per week = 1,040 days
- 1,040 days x 30 minutes of overtime per day = 520 hours of overtime owed per employee
- 520 hours of overtime x 50 employees = 26,000 hours of overtime owed
- Assuming each of those 50 employees was paid \$25.00 per hour, overtime is paid at 1.5x the regular rate (i.e., \$37.50). The class damages for unpaid overtime would be  $26,000 \times \$37.50 = \$975,000$ .

## Non-compliant wage statements

- 26 pay periods per employee<sup>4</sup> = \$50 for the initial violation and \$100 for 25 subsequent violations<sup>5</sup> = \$2,550 per employee
- \$2,550 x 50 employees = \$127,500

Combining the class damages with the "stacked" PAGA claims of \$455,000, the potential liability exposure is now \$1,557,500.

PAGA penalties coupled with class action damages can create significant financial liability for an employer.

## Key Takeaway for Employers

Due to the prevalence of PAGA lawsuits and the aggressive nature of PAGA penalties, the best way for employers to avoid liability is to ensure compliance with the Labor Code.

Given the complexities of the Labor Code and the Industrial Welfare Commission Wage Orders, you should contact your employment legal counsel for guidance on how they apply to your business.

## ENDNOTES

<sup>1</sup> [https://esd.dof.ca.gov/Documents/bcp/1920/FY1920\\_ORG7350\\_BCP3230.pdf](https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP3230.pdf);  
[https://www.populardemocracy.org/sites/default/files/sPAGA%20Report\\_WEB.pdf](https://www.populardemocracy.org/sites/default/files/sPAGA%20Report_WEB.pdf)

<sup>2</sup> <https://advocacy.calchamber.com/policy/issues/private-attorneys-general-act/>

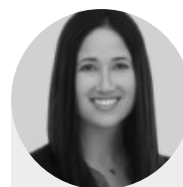
<sup>3</sup> The statute of limitations for PAGA penalties goes back one year from the date of the notice to the LWDA, but PAGA penalties continue to accrue, so they could exceed a one-year period. We used one year for purposes of this example. This also assumes that there were exactly 50 employees during each pay period during the one-year period.

<sup>4</sup> The statute of limitations for non-compliant wage statements is one year.

<sup>5</sup> For purposes of damages under Labor Code section 226, "initial violation" and "subsequent violation" are defined differently such that there is only one "initial violation" per employee.

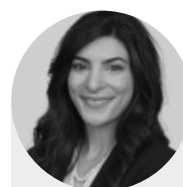
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Employment Law Practice Group. Her practice focuses on employment counseling and litigation and assists clients in all aspects of employment law.





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## APPLICATION TO TAKE CCLS® EXAM

Mail Application, copy of LPI Membership Card (if applicable), and fees to:  
**Vivian L. Shreve, CCLS, c/o WSGR, 650 Page Mill Road, Palo Alto, CA 94304**

(Select one)	(Select one)		
<input type="checkbox"/> Northern California	<input type="checkbox"/> Saturday, September 17, 2022	<input type="checkbox"/> Saturday, March 18, 2023	
<input type="checkbox"/> Southern California	<input type="checkbox"/> Saturday, September 17, 2022	<input type="checkbox"/> Saturday, March 18, 2023	

- **Deadline:** Applications must be received **60 days** prior to the examination date.
- **Late Application:** Late Fees apply when Applications are received less than **60 days** (but not less than 30 days) prior to the examination date, and accepted only if space is available.
- **Deferral:** Requests to defer to the next exam must be received at least **30 days** prior to the exam date.

EXAMINATION FEES (Select Payment Type)	Check <input type="checkbox"/> Payable to "LPI" Mail to above address	PayPal <input type="checkbox"/> Email exam application to <a href="mailto:CCLSCertifyingBoard@gmail.com">CCLSCertifyingBoard@gmail.com</a> . Payment link will be provided upon confirmation of eligibility to sit for exam.
<b>LPI Members</b> <input type="checkbox"/>	<b>Non-LPI Members</b> <input type="checkbox"/>	
On Time Registration Fee \$ 25.00	On Time Registration Fee \$ 75.00	
Examination Fee* 100.00	Examination Fee* 100.00	
Late Fee (if applicable) 45.00	Late Fee (if applicable) 45.00	
<b>TOTAL DUE w/o Late Fee: \$125.00</b>	<b>TOTAL DUE w/o Late Fee: \$175.00</b>	

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Name: _____	
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Name of Local LPI Association: _____	

### Employment Information

Provide your legal secretarial employment information beginning with your most recent (or current) employment in order to confirm that you have at least two years' experience. Attach a supplemental page if you have not been in your current position for two years.	
Position: _____	Dates of Employment: _____
Employer: _____ (name and address)	
Supervisor: _____	Supervisor's Phone: _____
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Summary of Duties: _____	

I certify that I have completed this application truthfully. I understand that a false statement may result in the rejection of this application or revocation of my certification. I understand and agree that the contents of the examination are confidential and not to be discussed with anyone, and that my employment record will be verified by a member of the California Certified Legal Secretary Certifying Board.

Date: \_\_\_\_\_

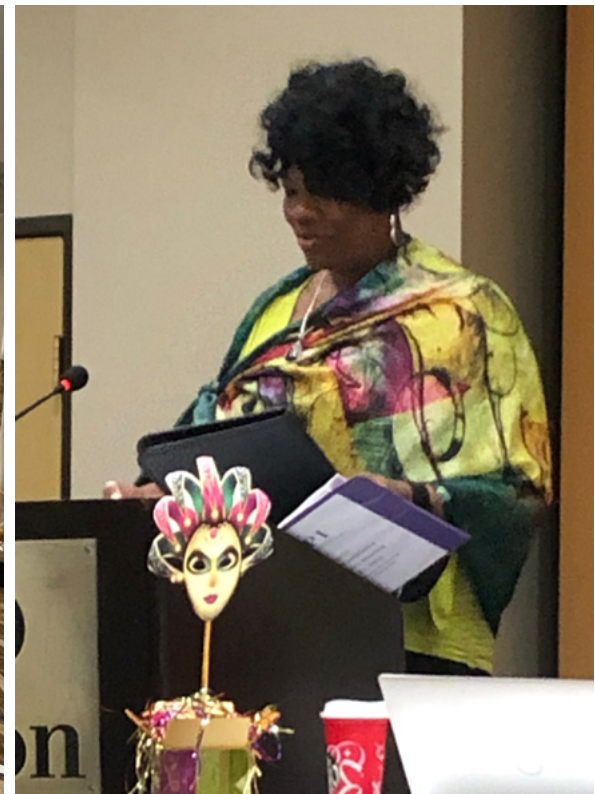
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\*Fees subject to change without notice.

Rev. March 2022

FEBRUARY 25-27, 2022 | STOCKTON, CA

# LPI'S 3RD QUARTERLY CONFERENCE BOARD OF GOVERNORS MEETING





We embarked on the third leg of the “S.S. LPI” cruise where we continued our educational journey to the Carnival in South America at LPI’s Third Quarterly Conference Board of Governors Meeting which was held at the Stock Hilton in Stockton, California on February 25-27, 2022. LPI and Stockton-San Joaquin County LPA did a great job! The Carnival theme was seen throughout this conference beginning with the welcome reception and continued with the festive headdresses and masquerade masks seen at banquet. To start off the educational part of the weekend, LPI’s CCLS Chair and CCLS Certifying Board had a Q&A Forum, which included a demonstration on legal computations. The Continuing Education Council then had a panel discussion on “The Great Resignation and the Effects on the Legal Community” which was very informative. The business of the corporation was conducted at the Board of Governors meeting and attendees were able to attend six educational Legal Specialization Section seminars. The weekend ended at brunch with an inspirational message from Marci Frazier.





# WEEKEND IN ITALY

## LPI'S 88TH ANNUAL CONFERENCE OF DELEGATES AND BOARD OF GOVERNORS MEETING MAY 19 – 22, 2022

BY VIVIAN SHREVE, CCLS AND M'LISS BOUNDS  
– SUBMITTED BY SANTA CLARA COUNTY LPA

Santa Clara County LPA invites you to join us for the 88th Annual Conference of Delegates and Board of Governors Meeting on the last leg of the S.S. LPI Transatlantic Cruise for a "Weekend in Italy." The conference will be held at the beautiful Santa Clara Marriott in Santa Clara, California. The Santa Clara Marriott is offering a discounted rate of \$149 per night. Please go to the LPI website for hotel reservation and registration information.

And remember this is the final leg on our S.S. LPI Transatlantic Cruise, so don't forget to pack your passports and receive your final stamp when you check in at Registration. There will be a box at the Registration Table in the California Ballroom foyer where you'll drop your stamped passport for a chance to win a weekend stay at the Silver Legacy in Reno, Nevada.

The Legal Specialization Sections will be hosting several workshops on Friday, May 20 and these are sure to be educational and informative. Look for further information on the specific workshops to come from LSS.

Thursday night will feature the inaugural Conference Kick-Off Reception, hosted by First Legal at the first stop on our Italian weekend in Rome. We are all very excited about this partnership with First Legal.

The Executive Committee, CEC, LSS and PRC committees will meet on Thursday, May 19, 2022, and the Officer and Chair Workshops, President's/Governors' Roundtable and luncheons will be held on Friday, May 20.

In addition, LPI Curator Heather Edwards (LPI Past President 2018-2020) will be unveiling the much-anticipated Legacy Project Room. There will be several exhibits in the Sedona Room along with some great opportunity drawing prizes starting on Friday morning.

Join us on Friday evening for our Welcome Reception where our theme will be Pizza Party in Naples, Italy. This will certainly be a festive and fun-filled event where attendees will enjoy playing games and listening to music performed by The School of Rock, in keeping with our Italian theme.

Saturday morning will start with the Pre-Board of Governors meeting, followed by the General Assembly of Delegates. Registration of Certified Delegates and Alternate Delegates will also take place during this time. The General Session will follow, complete with opening ceremonies and the welcoming of delegates and attendees by the Mayor of Santa Clara, The Honorable Lisa Gillmor. Reports from all officers and chairmen will be given, as well as awards for the Bulletin Contest, LPI Scholarships and Membership Gain Contest.

The Kalman S. Zemplyny II CCLS Luncheon will be hosted by the CCLS Certifying Board to honor our 18 most recent CCLSs – 13 from September 2021 and 5 from March 2022. The CCLS Luncheon is open to all conference attendees with pre-registration. Our LSI/LPI Past Presidents will be gathering together for their annual luncheon.



The Saturday evening banquet will have a Godfather-type theme as we spend our evening in Sicily. The Honorable Judge LaDoris Cordell (Ret.) will be our emcee for the evening and her book "Her Honor" will be offered for sale. Additionally, at the banquet, the new CCLS's will again be acknowledged and celebrated as they are presented with their CCLS Certificates. And the coveted Golda J. Cooper Chapter Achievement Awards will be presented, along with all of the President's Awards.

Sunday morning will bring our conference to a close with brunch and the formal installation of the LPI officers. While there are traditionally lots of tears flowing during installation, there will also be lots of photos taken, so be sure to wear your best travel attire as we say *arrivederci* to Italy from our final stop, Genoa. As we all know, this installation will be a historic one with the installation of Rod Cardinale, Jr. as the first male President of LPI. Following installation will be the Post-Board of Governor's meeting, led by the 2022-2023 Executive Committee of LPI.

Continued on page 13 ➔

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Santa Clara Legal Professionals Association is honored to be hosting this conference and look forward to seeing you all in May.

*Arrivederci*



**VIVIAN SHREVE, CCLS, (LEFT)** is a litigation executive assistant specializing in securities, commercial and IP litigation at Wilson Sonsini Goodrich & Rosati in Palo Alto, California. She passed the CCLS Exam in September 2014 and immediately took over as the CCLS Chair for Santa Clara County LPA and held that position until she joined the CCLS Certifying Board in 2016. After two term extensions, she is finishing her term this year as the Certifying Board Chair, and has recently been elected to serve as the President of Santa Clara County LPA for the 2022-2023 term.

**M'LISS JARVIS BOUNDS (RIGHT)** is a litigation paralegal specializing in catastrophic personal injury, elder abuse, and civil rights cases at the law firm of Scruggs, Spini & Fulton in Santa Cruz, California. She is a member of Santa Clara County LPA and currently serves as Governor



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# LEGAL PROFESSIONALS, INC. PRESENTS

## LPI TECHNOLOGY TRAINING LEGAL SPECIALIZATION SECTIONS

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Person or Via  
Zoom

# ANNUAL CONFERENCE MAY 20, 2022



### LSS Seminars

**1:30-2:30 p.m. - Probate**

**Contesting Trust and Wills**

Speakers: Denise E. Chambliss  
and Ariel Siner (Hoge Fenton)

**2:45-3:45 p.m. - Family Law**

**The Courtship of Eddie's Father**  
(Divorce issues from man's perspective)

Speaker: Jaya Reddy (Johnston, Kinney & Zulaica)

**4:00-5:00 p.m. - LOA/Federal**

**To Blunt or Not to Blunt: Marijuana  
Use and Employment**

Speaker: Eileen Kennedy (Berliner Cohen)

**4:00-5:00 p.m. - Civil/Specialty**

**Dissecting a Real Trial**

Speakers: Daniel Ballesteros  
and Ashlee Cherry (Hoge Fenton)

Pre-register (in person/Zoom):

Section Members Free; All others \$15

Walk ins: LSS Members \$5; All others: \$20

### Microsoft Word

**Hands On**

**with June Hunter**

**1:30-2:30 p.m.**

**Start with the Basics**

Learn Word Fundamentals for Efficient Legal  
Professionals

**2:45-3:45 p.m.**

**Continue with Styles**

Learn how to use and modify styles, and to create  
your own template for repeated use

**Two Classes**

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**LPI Members**

Pre-register (in person/Zoom) \$20 Walk-in \$30

**Non Members**

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**Or take just one (in person/Zoom)**

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*Last day to pre-register at discounted price for seminars: May 13, 2022*

**Register at: <https://www.legalprofessionalsinc.org/events/>**



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**LPI's 88th Annual Conference of Delegates and  
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**May 19-22, 2022**

Santa Clara Marriott, 2700 Mission College Blvd, Santa Clara, CA 95054



## LEGAL SPECIALIZATION SECTIONS

### INFORMATION GOVERNANCE GONE WILD! DATA MAPPING, RETENTION, DISPOSITION, AND LEGAL HOLD IN A REMOTE WORLD

Presented by: Matt Mahon  
Certified eDiscovery Specialist and  
Information Governance Professional

**April 28, 2022**  
**12:00 pm to 1:00 pm**

Online registration and payment available at:  
<https://www.legalprofessionalsinc.org/events/>  
or scan the QR code.



- Members of ALL Six (6) Legal Specialization Sections (LSS) - FREE!
- LPI Member/Local Association Member - \$25
- Non-LPI Member or Attorney - \$45
- The price increases \$5 after 04-14-22
- Registration closes 04-21-22



**THE LEGAL SPECIALIZATION SECTIONS IS A PROGRAM OF  
LEGAL PROFESSIONALS, INC., AN APPROVED PROVIDER, AND  
CERTIFIES THAT THIS SEMINAR HAS BEEN APPROVED FOR  
MINIMUM CONTINUING EDUCATION CREDIT IN THE AMOUNT OF  
1.0 HOUR BY THE STATE BAR OF CALIFORNIA.**



# THE WHAT, HOW, AND WHY OF 998 OFFERS

BY CHRISTIAN D. WICK, ESQ. - SUBMITTED BY STANISLAUS COUNTY LPA

You are exhausted. For the last couple of weeks, you and your attorney have been rapidly preparing for trial. You have attended mandatory settlement conferences and have kept a close watch on your phone and email for any correspondence from your attorneys indicating that a settlement can be reached. Months prior to this, you have likely responded to discovery requests and may have even been deposed. You felt that this matter was going to settle at one point, but the parties couldn't overcome necessary hurdles to reach that settlement. Now, on the eve of trial, it appears that a settlement is no longer possible, and you mentally prepare for what could be an even more exhausting week or more of trial ahead.

Just then, your attorney calls you. When you answer, they inform you they want to prepare a "998 offer". You are unsure about this, as you have never heard of it. Your attorney informs you that it is essentially another settlement offer. Understandably, you believe such an effort is futile, but your attorney explains that the 998 offer holds more weight and can be a calculated method to limit financial risk going into trial. You simply ask: "What, how, and why?"

## 1. What Is A 998 Offer To Compromise?

Codified at Code of Civil Procedure § 998, the "998 offer" is an offer to allow judgment to be entered on specific terms.<sup>1</sup> The offer must be sent from defendant to plaintiff at least 10 days prior to trial.<sup>2</sup> The offer need not contain any specific language; however, it must be a written offer including a statement of the terms and conditions of the judgment or award, and a provision allowing the accepting party to indicate acceptance of the offer by signing a

statement that the offer is accepted.<sup>3</sup> Once made, the offer must remain open until the commencement of trial, or within 30 days after it is made, whichever occurs first.<sup>4</sup> If not accepted within the above timeframes, it is deemed withdrawn.<sup>5</sup>

## 2. How Is A 998 Offer Different From Other Settlement Offers?

Section 998 is a cost-shifting statute designed "to encourage the settlement of litigation without trial or arbitration, by punishing the party who fails to accept a reasonable settlement offer from its opponent."<sup>6</sup> If plaintiff turns down defendant's 998 offer, and subsequently fails to obtain a more favorable judgment at trial, the opposing party faces both mandatory and discretionary penalties which flow from their refusal of the 998 offer.

### • Mandatory Penalties.

If plaintiff fails to obtain a more favorable judgment than defendant's 998 offer, plaintiff will be barred from recovering court costs incurred after the 998 offer was made. In addition, plaintiff must pay defendant's post-offer court costs.<sup>7</sup>

### • Discretionary Penalties

In addition to the mandatory penalties above, the court may also order the plaintiff to pay a reasonable sum to cover defendant's post-offer expert witness fees incurred in both preparation for and during trial of the case.<sup>8</sup>

## 3. Why Does This Force A Plaintiff To More Carefully Consider The 998 Offer As Opposed To Other Settlement Offers?

If plaintiff refuses the 998 offer and proceeds to trial, but recovers less than

defendant's 998 offer, both parties may recover costs, including attorney fees. However, the extent of their recovery differs.

Plaintiff is still entitled to an award of costs, including attorney fees<sup>9</sup>, as a prevailing party, pursuant to Code of Civil Procedure section 1032, but because they did not recover more than defendant's 998 offer, the costs plaintiff may recover are limited to pre-offer costs.<sup>10</sup>

Defendant is entitled to post-offer costs, including, in the discretion of the court, post-offer expert fees.<sup>11</sup> Since defendant's 998 offer was greater than plaintiff's judgment, defendant is treated as the prevailing party for purposes of post-offer costs.<sup>12</sup>

Accordingly, plaintiff must carefully consider the merits of their own claim while in receipt of a reasonable 998 offer from defendant. Should defendant make a competitive 998 offer, plaintiff refuses defendant's 998 offer, and plaintiff subsequently fails to obtain a more favorable judgment at trial, plaintiff will now be on the hook for defendant's post-offer costs and simultaneously barred from recovering their own post-offer costs.

The 998 offer also commands defendant's reasonable assessment and consideration of the merits of plaintiff's claim and the merits of any defenses available to defendant in order to convey a competitive 998 offer, as defendant's 998 offer will be of no regard if plaintiff recovers more than defendant's 998 offer.

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← Continued from page 16

## ENDNOTES

<sup>1</sup> Cal. Code Civ. Proc. § 998(b)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Cal. Code Civ. Proc. § 998(b)(2); *Marina Glencoe, L.P. v. Neue Sentimental Film AG* (2008) 168 Cal.App.4th 874, 880 ["In order to function as an offer for purposes of section 998, an offer must remain open for the statutorily designated period – "prior to trial or . . . within 30 days after it is made, whichever occurs first . . . ."]

<sup>5</sup> Cal. Code Civ. Proc. § 998(b)(2)

<sup>6</sup> *Westamerica Bank v. MBG Indus., Inc.* (2007) 158 Cal.App.4th 109, 129

<sup>7</sup> Cal. Code Civ. Proc. § 998(e)

<sup>8</sup> Cal. Code Civ. Proc. § 998(c)

<sup>9</sup> "Costs" recoverable by a prevailing party under Code of Civil Procedure section 1032 include attorney fees if authorized by statute or contract. See Cal. Code Civ. Proc. § 1033.5(a)(10)

<sup>10</sup> Cal. Code Civ. Proc. § 998(c)(1)

<sup>11</sup> Cal. Code Civ. Proc. § 998(c)

<sup>12</sup> *Scott Co. of Calif. v. Blount, Inc.* (1999) 20 Cal.4th 1103, 1110; *SCI Calif. Funeral Servs. Inc. v. Five Bridges Foundation* (2012) 203 Cal. App.4th 549, 577.



**CHRISTIAN D. WICK** is an associate attorney in the litigation department at Berliner Cohen, LLP. He can be reached by phone at 408.286.5800 and via email at [christian.wick@berliner.com](mailto:christian.wick@berliner.com).



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# CCLS QUIZ

## LEGAL COMPUTATIONS - CALENDARING

DIRECTIONS: USING THE CALENDAR PROVIDED, PLEASE  
DETERMINE THE LAST DAY FOR EACH ACTION BELOW.

JANUARY						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

FEBRUARY						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

MARCH						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

1. Your trial date is March 26. What is the last day to personally serve interrogatories?
2. Your demurrer is being heard on February 2. What is the last day to mail serve your motion?
3. A complaint for unlawful detainer was personally served on January 11. What is the last day to respond?
4. Great Aunt Betsy died on January 26. You found out on January 31. What is the last day to file the original will?
5. Your Case Management Conference is scheduled for March 6. What is the last day to file your Case Management Statement?
6. A special meeting of shareholders has been set for March 13. What is the first day to provide notice?
7. Your motion for summary judgment in an unlawful detainer matter is scheduled for March 23. What is the last day to personally serve the motion?
8. Your client was personally served with a petition for dissolution on February 1. What is the last day to file a response?
9. Plaintiff's complaint was served on defendant on February 5. What is the first day defendant may serve written discovery?
10. Plaintiff's incomplete responses to written discovery were mail served on January 12. What is the last day to file a motion to compel further responses?

CCLS QUIZ ANSWERS ON PAGE 25



# HOW TO FILE AND OBTAIN A NAME AND GENDER CHANGE PETITION AND ORDER

BY MARK RICE, ESQ. – SUBMITTED BY MARIN COUNTY LPA

This year, I was asked by a longtime contractor client if I would help him (now, her) obtain a name and gender change order. The name change was not just from Paul to Paula, but also a last name change, as Paula had been adopted and desired to have the born family last name instead, as well as a change of birth certificate in another state. I said yes, we would help. And we had never done one of these before, much less during the limited court access during COVID-19.

I suppose this was another moment cementing my client relationship with Paula, my own growth curve, not just adding a skill to our office, but really, a better appreciation over what identity is. In a booklet that my now adult daughter gave me one year, on page 34, stating what my dad has given me, she wrote, “the courage to be myself.” And, I thought a lot about that statement while helping Paula with the legal piece for her own courage to be herself. The Court just signed the order last month, and we have 12 certified copies to prove it.

Here is a short conversation among Paula, me and my digital manager, Allison Jacob, who got the assignment to do the research, prepare the forms, and interface with the Court to get the name and gender change order accomplished for Paula. It walks you through all the steps, the fees, and the surrounding tasks beyond the Court – DMV, passport, birth certificate, and Social Security card.

**Mark:** Paula, what led you to ask us to help you with your gender and name change petition?

**Paula:** In working through run-of-the-mill construction disputes, you and I had had enough personal conversations that I felt comfortable, and that you would respond positively—first to my announcing my gender and name changes, and then, be willing to help with the legal paperwork.

Just a feeling I had. We had talked about my being adopted, my upbringing and feelings about it, and it just felt right to ask.

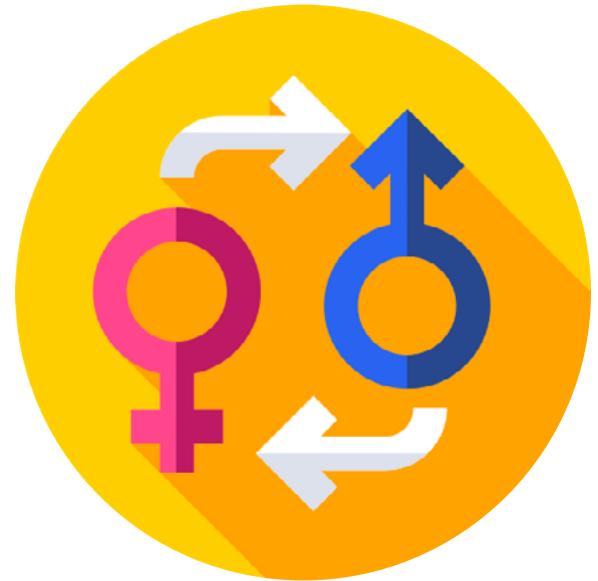
**Mark:** Allison, how did you react to getting this assignment to help Paula?

**Allison:** Both excited and nervous. I had met Paula in the office several months before when you were mediating something. When you told me he was becoming Paula, and then asked if I would be in charge of researching the steps needed, I was proud to help and curious what was involved. It was all new to me. I appreciated the confidence you placed in me, and knew it was important to do right by Paula.

**Mark:** How did you start? Your research?

**Allison:** I went to the internet, and found a handful of really good resources: [www.courts.ca.gov/22489.htm](http://www.courts.ca.gov/22489.htm) for the forms, <http://transequality.org/documents>, and even a good YouTube video, “How to: Name and Gender Marker Change in California,” by one of the law students at UC Berkeley’s Name and Gender Change Workshop (NGCW), which is staffed by law students. California courts’ self-help website has a section on gender change as well. There were some good articles on how to navigate the forms, which the State Judicial Council recently simplified and streamlined. From there, it was working with Paula to get a few details, plus a medical doctor’s declaration.

**Mark:** What about ID documents, such as birth certificate and driver’s license – is that automatic once there is a name and gender change or does that entail more forms and paperwork?



**Allison:** Well...more forms and paperwork, of course. If the client was born in California, once the Petition for Name and Gender Change is granted by the court, a certified copy should be sent to the California Department of Public Health, Vital Records – MS 5103 PO Box 997410, Sacramento, CA 95899-7410. Paula was born in Illinois so she is submitting the certified copy there for birth certificate change. There is going to be a fee for that as well. In California, see [www.cdph.ca.gov](http://www.cdph.ca.gov). The fee currently is \$23 for birth certificate change and includes one certified copy; pay \$25 at time of application for each additional certified copy requested. Per CDPH’s website, it takes six to eight weeks to process. The forms needed are a VS-20 and VS-24, plus the certified court order.

**Mark:** Allison, what about DMV – how does that work?

**Allison:** Well, and this is pretty interesting, the DMV in California will permit you to change your name and gender without a court order. To do so, go to [www.dmv.ca.gov](http://www.dmv.ca.gov). A good resource here is [transgenderlawcenter.org/resources/id/id-change](http://transgenderlawcenter.org/resources/id/id-change). Two forms are needed – DL-329S for gender (male, female or non-binary), and DL-44 for

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name change. DMV charges a \$38 fee and the process can be done online, it seems. Also, usually, the DMV will want proof of a new name and it seems they want you to present your new Social Security number and card – so that’s one more name change to carry out so the client’s Social Security benefits are properly tracked after the name and gender change. Here’s that website: KA-01981 Customer Self-Service. Here again, a certified copy of the court order is needed, or, this change in Social Security number and card can occur based on the change in birth certificate, driver’s license and passport. There does not appear to be any fee with the Social Security Administration.

**Mark:** Sounds tricky and circular – right, Allison? Man, my head spins just counting the number of forms, much less filling them out. You know how much I hate paperwork. Thank goodness you managed this, not me.

**Allison:** Yep. It was a bit confusing at first and it needed lists. It’s a big puzzle of sorts between all the agencies you need to contact and their forms. Just as an example, DMV’s website seems to suggest that you have to change your Social Security card first, otherwise, DMV will deny your driver’s license change. Here’s the language from DMV’s website:

When you apply for a new DL/ID card using your new name, the first thing DMV will do is verify your information with SSA, so make sure you have informed SSA of your new name.

*If your SSA information does not match your new DL/ID application information, your application will be denied, and you will receive a Request for Verification of Information letter from DMV telling you what to do.*

**Mark:** Okay, good to know. Typical DMV. But what about the passport – more forms and fees?

**Allison:** (Lol) Yeah, that’s right Mark, more forms and fees. You take a certified copy of the court order to the U.S. Passport Office—one’s in San

Francisco—and fill out a form called DS-60, Affidavit of Name Change. The fee for the new passport is \$110 to the U.S. Passport Office, or \$140 if you also want a Passport Card in addition to a Booklet Passport (the Card also serves as a “real ID”) and requires passport photos as well. All on the website, Name Change for U.S. Passport or Correct a Printing or Data Error. Sometimes a local post office will receive and process passport applications, but the fastest way to get this done is make an appointment directly with the U.S. Passport Office; it’s usually two in-person visits – one to drop off the new application and old passport, and then a few days later, to pick up the newly issued passport.

**Mark:** Allison, what does the U.S. Passport Office say about non-binary gender markers, beyond “Female” and “Male” descriptors?

**Allison:** Yes, this here is where it’s getting really interesting – maybe political? According to the U.S. Passport Office website, you can change your identification *without any court order*, as a matter of personal preference, choice and “gender marker”. But the US Passport Office has only said *it’s trying* to implement the new rule, and has yet to update its forms and apologizes sort of for not having it done yet – sort of hard to say what that means. Maybe it means this is mired in Washington politics:

You can now select the gender you would like printed on your U.S. passport, even if the gender you select does not match the gender on your supporting documentation such as a birth certificate, previous passport, or state ID. We no longer require medical certification to change the gender marker on your U.S. passport.

To request a new passport with a different gender than the one you have on your current passport, or if you are applying for your first passport, submit a new application and select your preferred gender marker. Follow the steps on this page to learn which form to submit. You can select “M” or “F”

which are the gender markers currently available. *We are working to add a gender marker for non-binary, intersex, and gender non-conforming persons as soon as possible.*

Plans for a Gender Marker for Non-Binary, Intersex, and Gender Non-Conforming Persons

We are taking further steps toward ensuring the fair treatment of LGBTQI+ U.S. citizens, regardless of their gender or sex. We are beginning the process of updating our procedures for the issuance of U.S. passports and Consular Reports of Birth Abroad (CRBAs) with the goal of offering a gender marker for non-binary, intersex, and gender non-conforming persons. The process of adding a gender marker for non-binary, intersex, and gender non-conforming persons to these documents is complex and will take time for extensive updates to our information technology (IT) systems.

*We cannot provide an exact timeline for when we will begin offering a gender marker for non-binary, intersex, and gender nonconforming persons. However, we will provide updates on this webpage. In the meantime, applicants should not apply for a passport with a non-binary, intersex, or gender non-conforming gender marker.*

**Mark:** Hmm...geez, this seems like doubletalk, since the California Bar pretty easily has expanded its gender marker elections when renewing a law license. California in 2017 was the first state to permit gender-neutral or non-binary gender markers in vital statistics and identification, with passage of SB 179, the Gender Recognition Act. Here’s a good article about the Act. And, this U.S. federal webpage saying “gender non-conforming persons” seems a bit pejorative, don’t you think? Like it’s saying, only male and female selections are “conforming,” otherwise you are “nonconforming”? I detect a little bias there...the whole point is that

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we conform to who we are, no longer to what others say we “should be” or say we are.

**Allison:** Yep, gotcha, Marco. It does seem that the language is lagging—not quite catching up to the reality of folks’ identities and choices. It seems the Passport Office could have written, “and other gender markers and recognition.” I mean, why call anyone “non-conforming” in a blurb about making the form more receptive to everyone *conforming to themselves*, not forced anymore into solely “F” or “M” categories if they don’t neatly fit? Bugs me.

**Mark:** Okay, right. So, let’s leave Washington and return to the meat and potatoes of the required California Judicial Council forms and our petition. Which are the forms needed? And the court fees?

**Allison:** They are pretty simple and you can download them all from [www.courts.ca.gov](http://www.courts.ca.gov):

1. NC-200, *Petition for Change of Name, Recognition of Change of Gender, and Issuance of New Birth Certificate*; NC-100, *Attachment to Petition*;
2. NC-125/NC-225, *Order to Show Cause for Change of Name to Conform to Gender Identity*;
3. NC-230, *Decree Changing Name and Order Recognizing Change of Gender Identity and for Issuance of Birth Certificate (for signature by the Judge)*;
4. CM – 010, *Civil Cover Sheet*;
5. NC-310 - No longer needed - *Declaration of Treating Medical Physician under the Health & Safety Code*, this can be on the Declaration Form (NC-310) or as an attachment, as long as it has the required language and is under penalty of perjury by the doctor. It used to be required under Health & Safety Code Sections

10340-103433, but no longer. But we had one anyway. The clerk told me when we filed the petition this form was no longer needed, but that really was not very clear anywhere in the form instructions. But no harm to have it since instinctively, it was required, and you just want the petition granted without questions, and a “doctor’s note” form NC-310 exists, so we used it.

**Mark:** Okay. That’s a bunch. And how easy were those forms to fill out?

**Allison:** Fairly simple. Paula provided the biographical information, like location and date of birth, reasons for the name change, and the doctor’s affidavit. It has to be signed by the petitioner, not just the attorney. It can be done without an attorney. Just file with the \$435 filing fee and added \$40 for each additional certified copy needed (one copy will be provided, but more are needed -see above. I recommend at least 10).

And if it’s just a gender change and not a name change, it’s the same forms except for an NC-300 instead of an NC-200. Those who cannot afford the filing fees can apply for a fee waiver at the court.

**Mark:** Paula, looking back on this, from a customer experience, how could it have gone smoother, better?

**Paula:** Well, and you explained this, with COVID-19 making in-person clerk visits impossible, it was hard to know how long this was going to take. We submitted it in April and got the order in August, so four months, and we each had to make some calls to see what was up. So that was a bit unexpected. I thought even with COVID-19, two months, max. So, I was pretty far along as a woman before the paperwork caught up, the order that is, to who I had become, and really was.

**Allison:** Yes, I agree with Paula. In fact, with the new streamlined forms, when I called to see the status, the clerk did mention that they were not sure exactly if

more was needed. As in, they too were left without a lot of guidance on when it’s ready to have the judge sign, after the objection period is over. Today, once the forms are filed and a notice filed – to solicit any objections – if none, there is no court hearing needed. So, it sat a bit while the Court staff was itself verifying everything was in order. It was, but even they were not exactly sure and that led to some delay, plus all the COVID-19 processing delays. It helped a lot that the clerk’s office opened back up in June by appointment, so I could talk in person with a clerk and iron anything out, quickly, within a day or two.

**Mark:** Well, so I add it up, just court and filing fees, its \$435 to the court, \$40 per each added certified copy, \$38 to DMV, \$140 to the U.S. Passport Office, \$23 for a new birth certificate, \$25 for each added certified copy of a birth certificate, and some postage and legwork. Maybe \$750 total unless the court filing fee gets waived. Allison, could a person do this by themselves, in pro per, self-represented? Can it be done?

**Allison:** *Absolutely.* It takes some patience reading the forms and instructions, but there are many resources out there now aimed at helping people with these forms, plus clinics like at UC Berkeley that are specialized self-help clinics just for name and gender change and gender marker documentation. And we have the Legal Self-Help Center also, at the Civic Center: Marin County Superior Court – Legal Self-Help Center. So yes, it can be done.

**Paula:** Don’t forget – I’m married, so I also had to change our marriage certificate, to now reflect my legal name. That was another step.

**Mark:** Yes – I looked it up, as this piece Paula you took care of on your own with your spouse. Back to California’s Name Equality Act of 2017. You submit your request with a certified copy of your name change court order to the

Continued on page 23 →



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California Department of Public Health, Vital Records, and the County Clerk/Recorder where the marriage license was issued, and indicate the desired name change. It's no different than when someone keeps their maiden name upon marriage, or decides after marriage to adopt the other spouse's last name, or change back to the last name before marriage. A request coupled with proof of legal name change should do it.

**Mark:** Paula, any final thoughts on this, so others can learn about what you just got done?

**Paula:** I appreciated your and Allison's help. There is so much to gender change, from medical, to telling people, to life changes and spiritual journey, to self. It was good to have this one less thing that I had to do in the midst of my own personal changes and evolution of who I really am. And, it also was nice to have your and Allison's support along the way for my own decision to change gender and name. Allison would kid and laugh telling me that you sometimes slipped back to "Paul" and she'd correct you and you'd mutter, "I know, darn it, working on it." We all are.



**MARK RICE, ESQ.**

is a partner at McNeil  
Silveira Rice & Wiley in

San Rafael, California. He has over 450 days in trials and arbitrations, in addition to mediations. Mr. Rice's trial experience includes all matters of business disputes, with a specialty in construction disputes in the public and private works sectors, bid disputes, real estate, complex business torts, collections, and employer defense related matters for corporate and business clients.

## Dates to Remember | 2022

**APRIL 28, 2022 | 12:00 P.M. – 1:00 P.M.**

**LSS Webinar** – Information Governance Gone Wild! Data Mapping, Retention, Disposition, and Legal Hold in a Remote World

**MAY 5, 2022 | 12:00 P.M. – 1:00 P.M.**

**LSS Webinar** – Preliminary Injunctions

**MAY 17, 2022**

**LPI/NextGen Legal** - Overview of California Discovery Online Class (*commencing May 17*)

**MAY 17, 2022**

**LPI/NextGen Legal** – New Beginning Legal Secretarial Training Online Class (*commencing May 17*)

**MAY 19-22, 2022**

**LPI's 88th Annual Conference of Delegates and Board of Governors Meeting**

– "Weekend in Italy" Santa Clara Marriott, Santa Clara, CA, Hosted by Santa Clara County LPA

**MAY 26, 2022 | 12:00 P.M. – 1:00 P.M.**

**LPI Benefit Provider, Northwest Mutual Webinar** – *Learning About Long-Term Care*

**JUNE 2, 2022 | 12:00 P.M. – 1:00 P.M.**

**LSS Summer Court Series** – *USDC Northern District (Check LPI website – more details coming soon!)*

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# TECHNOLOGY BY ITSELF DOES NOT MAKE A 21ST CENTURY LAW FIRM

BY FRANK LONG, MS

*"Digital Transformation is Not about Technology – it's about strategy and new ways of thinking."*

Digital Transformation Playbook – David L. Rogers

Technology alone isn't very good at overcoming inertia. Getting the most out of technology in a way that helps a law firm move forward and achieve its objectives requires careful planning and input from stakeholders across the firm, as well as the expertise and deep domain experience of the firm's technology vendors. If ever there was a time when law firms needed to explore and leverage the full capabilities of legal technologies to remain competitive it is now, while a pandemic and industry dynamics force law firms to innovate their way onto solid footing in a rapidly changing environment.

This article examines how law firms can strategically plan and operationalize the full potential of their technology; assuring their ability to capitalize on the operational advantages and data insights technology can offer in support of the firm's business strategies and objectives.

## Adjusting to a rapidly changing industry

Challenges and competitive pressures on the legal profession that would have been difficult to imagine 20 years ago now bear down on law firms across the landscape. Factors that challenge and can threaten a law firm's survival include law firm mergers, growth in outsourcing legal services, pricing pressures, competitive business models, and increased client demands.

That's only part of the picture. There are even more challenges rising from changes in workforce characteristics and evolving technologies.



Some of them include:

- Multi-generational workforce, shift to remote working or a hybrid model
- Exponential growth in volume and types of electronic data
- Court eFiling; law firm automation; client collaboration; new technologies (AI, SaaS, Analytics)

Not every law firm has dealt with all these factors, but few have escaped them altogether.

## Putting Technology Into Action

Looking to technology as an answer to these problems may be tempting but would not ultimately provide the full answer. Technology on its own is simply an enablement. Operated as part of sound business strategies and involved firm stakeholders, however, technology can take you to the moon and back.

The first step to getting technology to do the heavy lifting it was designed for is planning. Great technologies come and go but planning is always in style, and essential for getting the full set of capabilities and advantages technology solutions can offer.

## Harnessing Strategic Thinking and Organizational Agility

Before technology can optimally serve a law firm's needs, the firm must engage its strategic thinking.

It should define and challenge its underlying core assumptions and ardently seek to uncover blind spots.

It should also assess the organization's readiness:

- Who are all the stakeholders?
- What are you trying to achieve? Goals? Objectives? Success Criteria?
- How will you decide what to invest in, and is budget available?
- If other departments are impacted, are they willing to change? Is there cross-organizational support and executive sponsorship?
- What does the organization and staff need to support the roll-out and ensure success?
- Plan and timing?

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The legacy organization must be ready to make change happen, and at a rapid pace. Without organization agility, failure is imminent.

Even the most successful companies struggle with adapting their strategic thinking to think differently about every aspect of their strategy – customers, competition, data, innovation, and value.

It may be useful to conduct an audit of your firm's readiness for the new technology.

Some needs can be uncovered by looking at a firm's vision, strategies, and plans, including needs related to client matters, business processes, and practice areas. Getting a handle on the full scope of needs requires input from everyone.

By "everyone" we mean law firm staff members who represent an array of disciplines and can contribute expertise relative to the technology being implemented.

Is it really necessary to involve all those disciplines?

Yes, and for good reason.

## When you don't know what you don't know, ask someone else

Taking on a new technology is not unlike taking on a new employee. Just as human resources departments have a model for making new hires, law firm business models should have a model for acquiring and deploying new technologies. Each model uses specific questions to reveal strengths and weaknesses.

In a law firm, this vetting process should gather individuals from across the organization who possess multidisciplinary expertise to "depose" the legal technology and legal technology vendor.

## Why does this approach work?

It's simple. Let's look at eFiling and service of process through the eyes of "financial people." Looking at a new technology through the lens of finance and accounting professionals, you gain insights squarely related to the technology's finance-specific features or even if not a finance solution, it may have impact to cost-related outcomes for the business.

In the case of data provided by a litigation support service provider, the finance and accounting staff members may notice a system integration between the provider and the firm that can automate reconciliation and allocation of payments to clients. On their recommendation, this process becomes part of the business model which, in turn, makes the firm more efficient.

## Did it actually happen?

If you're wondering whether law firms in the real world use these measures to their advantage the answer is, "Yes."

In fact, one Los Angeles area law firm used this exact approach to streamline its accounting and save the cost of one full-time employee.

A critical key in leveraging this technology strategically was the daily transfer of order and payment details from the customer relationship management (CRM) system used by the firm's litigation support service provider directly to the law firm's CRM.

The success owed to involving multiple stakeholders in the planning who understood the law firm's needs, recognized an opportunity for technology to satisfy those needs, and turned to technology that met their requirements.

Hard to believe? Read the case study: [How This Law Firm Leverages a System With Rapid Legal to Improve Cost Control and Gain Efficiencies.](#)

## When it Comes to Data: Think Differently and Think Often

Data adds significant value from within the framework of a law firm's business model. Data can help a firm save money and lower certain types of risk, so when you consider taking on any technology solution you'll want to ask questions about the data it provides.

Specifically, you'll want to ask whether the data is sharable and how it can be used to track performance and identify trends.

You'll especially want to know whether data can be applied to predict trends or outcomes that might occur. To facilitate this kind of business insight you'll again want to plan strategically and involve stakeholders from throughout the law firm who understand what data is important, and how it can be used to advance the firm's objectives.

This approach allows decision makers to use data and analyze it so they understand the performance of efforts you've already made. This look back will strategically inform the next move forward.

Properly implemented, legal tech solutions will produce data that tells you how well your business is running. With that, you can continue to let the business evolve and move it forward. At that point you can use predictive analytics to move the law firm even further along.

Analytics is making itself a marquee player in the practice of law. Be certain that your firm's business model is structured to use the power of analytics and data as a revenue generator, to control costs, help utilize staff, and smartly guide many other functions inside a law firm.

## Predictive Analytics for Cost Control

If you'd like to do a deep dive into predictive analytics check out [this article](#) to learn how business are using it to control costs.

## Cure performance issues with data

Predictive analytics is a glamorous term and its role in courtroom litigation was popularized by the film *Runaway Jury*. In the trenches of a firm's day-to-day operations, however, the more routine use of data is less glittery but no less important.

For example, data about the performance of common litigation support services such as court filing, eFiling, and service of process all can help gage the performance of vendors. It is also common to use data to monitor certain litigation support services and know whether they are being delivered as promised.

This information can help firms operate more efficiently and, more importantly, keep more of the revenue they earn. Not all law firms, however, have this data.

This is where a litigation support service provider that provides court filing, service of processes, and other critical services can help. They can collect these types of data and provide it to law firms in regular reports. For example, a firm may want to perform an analysis about key services

such as [electronic court filing](#). A firm can use the data in the litigation support service provider's eFiling reports to evaluate turnaround times and rejection rates, and know whether it needs to course correct.

Similar data can be pulled from a litigation support service provider to measure [service of process performance](#). This data enables a firm to track service level distribution, orders by type, and service of process orders by pricing zone. It's important for a firm's business model to use these data sets as cost control measures.

As an example, a firm can examine service of process orders by pricing zone to predict whether the cost of service of process in certain locales may be untenable. The firm may also use the reports to gage the vendor's performance or the law firm's own internal performance.

When a law firm searches for a litigation support service provider, its business model should stipulate that a provider can deliver these reports.

## 4 ways your firm's business model can use sharable data:

- Service level distribution
- Orders by type
- Service of process orders by pricing zone
- Service of process performance

Read [Technology Your Process Server Should Be Using](#) and learn how these reports can save money for your law firm!

Want to lower rejection rates for your electronic court filings? This article explains how. Read it: [Common Pitfalls for Court Filing Rejections and How to Avoid Them](#).

## Onward and upward

There is power in planning and expertise and uniting all of the key stakeholders in a technology acquisition and deployment. The success of that acquisition hinges on more than simply having a sound business model. It also requires developing and maintaining strategic best practices that move the law firm toward key business outcomes.

The thing to remember about introducing technology to a law firm is this: Technology on its own is just an enablement, but under the guidance of a well-structured business model and involving key firm stakeholders, technology can take you to the moon and back. And, in many cases, the fuel for that trip will be data that helps you continually leverage that technology and plot the course forward.



**FRANK LONG, MS,**  
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# SACRAMENTO LSA'S COMMUNITY/ CHARITABLE PROJECT: "FAIRYTALE TOWN SAFE & SUPER HALLOWEEN"

BY LYNNE PRESCOTT, CCLS - SUBMITTED BY SACRAMENTO LSA

While Sacramento LSA has a long history of community and charitable projects, one of our favorites is participating in the Fairytale Town Safe & Super Halloween event each year.

The idea for Fairytale Town started in January 1955, when Disneyland opened in Anaheim, California. A few hundred miles north, ideas were stirring with the Junior League of Sacramento, a civic-minded women's service group. Studying the success of both Disneyland and Fairyland, a children's storybook park in Oakland, the JLS began laying the groundwork for a project called Fairytale Town in William Land Park.



In 1956, miniature scale models were commissioned, and a brochure published that explained the new park would "... depict classics in children's literature and be among the child's first contacts with life and human relations." With the help of private donations and community support, groundbreaking took place in 1957.

The magical land of Fairytale Town opened to the public on August 29, 1959, with more than 17,000 people visiting during opening weekend. Among

the original play sets on the grounds: The Crooked Mile, The Cheese Stands Alone, Farmer Brown's Barn, Owl's House, Cinderella's Carriage, King Arthur's Castle, and the Children's Theater. Fairytale Town soon became a popular destination for family outings, visitors, children's birthday parties, and the annual community Easter Egg Hunt.



Many attractions have been added to Fairytale Town since it first opened, and the park has grown significantly: Jack & Jill Hill; the Urashima Taro Japanese Garden; the Rabbit Hole slide; Sherwood Forest; Mother Goose playset; Jack and the Beanstalk and the Giant's Foot playsets; the Little Engine that Could playset; the Mother Goose Stage; Mr. McGregor's Garden; the Old Woman Who Lived in a Shoe playset; the Yellow Brick Road; and, Anansi's Web playset.

In 1986, Fairytale Town held its first Safe & Super Halloween weekend and it continues to be popular among the community today and is hosted every year during October. Although there isn't a clear recollection of when Sacramento LSA first became involved with the Safe & Super weekend, we do know it has been close to, if not more than, 20 years.



Families bring their children to Fairytale Town, dressed in their Halloween costumes, on one of the three nights of the event (Friday, Saturday, or Sunday), where they are able to visit all the attractions and receive candy and other treats donated by various organizations who act as hosts at designated stations in the park. Sacramento LSA has been fortunate to host at King Arthur's Castle each year. In the castle, there is a round table that seats a number of children, so we usually have a couple of craft projects for the kids that they can do, or we may have coloring sheets that the children can draw on or color to take home with them. It's a nice break for the kids (and their parents). Sometimes, we ask the children if we can keep their artwork and we display it for everyone to admire.

Of course, we also have lots of candy for the kids, most of which is donated by law firms and our members. Sacramento LSA purchases all the art supplies and there is never any cost to the children or their families for visiting us at King Arthur's Castle. Our members and their families volunteer to staff the event, taking a shift over the weekend, or working several times. We dress up according to that year's theme, which is almost as much fun as being with the kids! Some of the past themes have been: Sleeping

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Beauty; The Wizard of Oz; Pirates of the Caribbean; Lord of the Rings; Star Wars; Dinosaurs; and Super Heroes.



Of course, we take lots of pictures, sit down and do crafts with the kids, and even sneak a few pieces of candy! We love doing this event and being able to join other organizations who support the community. Fairytale Town will celebrate its 63rd anniversary this August, and its 36th Safe & Super Halloween in October. We are very proud to be part of its long and wonderful history of bringing joy to the children of Sacramento.

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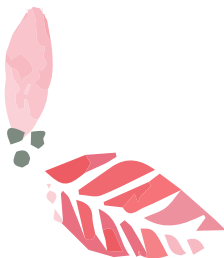
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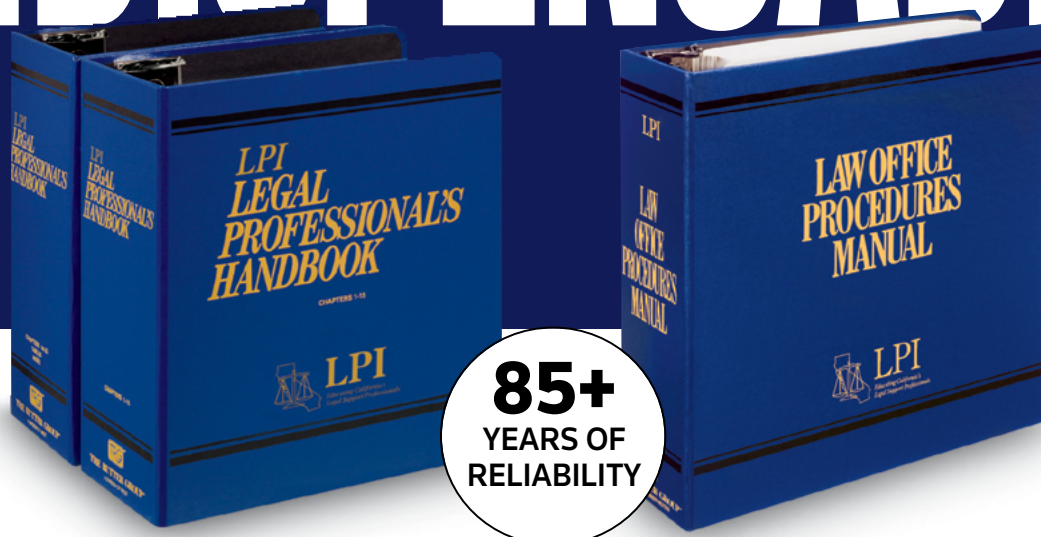
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