

California LITIGATION

CALIFORNIA
LAWYERS
ASSOCIATION

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EDITOR'S FOREWORD

LIKE OUR NEW LOOK?

Written by Benjamin G. Shatz

Editor-in-Chief



Time and again, when the Litigation Section surveys its members—i.e., you—we hear that a top benefit and delight of section membership is this publication. We aim to keep you happy! Along those same lines, CLA is always looking for ways to improve. After much careful deliberation, and a few heated meetings, we present this issue in a new format. Are the changes even noticeable? Do you like what you see? Do you have ideas about the look-and-feel of this publication? Feel free to share your views, positive or negative.

Regardless of debates over association branding, imposing uniformity upon the publications from each section, and the minutiae about font size, colors, and column width, your devoted Editorial Board always strives to bring you quality content. So despite a new look, this issue contains the collection of content that you've come to expect.

We start off with Kevin Dwight's piece on storytelling—a core skill for litigators. Does it really matter whether you're presenting to a judge, jury, or arbitrator? Of course it does. Rule one is "always know your audience."

Next, L.A. Superior Court Judge Riff gives us his unvarnished views about our "broken discovery" system. If this impactful piece seems familiar, it may be because you are an avid consumer of CLA's publications and already saw this piece in CLA's association-wide publication, *Legal Perspectives* (Summer 2022 ed.). CLA launched *Legal Perspectives*, as a digital-only (i.e., online) publication featuring articles curated from across all CLA sections (and beyond), in the Summer of 2021. As always, the Litigation Section has done its share (and more!) to provide material for *Legal Perspectives*. Right now there are five issues of *Legal Perspectives* on the CLA website, and every one of them includes a piece from our section. This is further validation of the quality of our publication and we are delighted that our articles are worth sharing with the entire CLA family.

Our Section's small-but-mighty Federal Courts Committee comes through again with another fantastic federal judge interview. This time it's Ninth Circuit Judge John Owens. Any judge known for citing *Game of Thrones* gets a big thumbs up from this Editor-in-Chief. (See *Banks v. Northern Trust Corp.* (9th Cir. 2019) 929 F.3d 1046, 1054.)

Next we have two book reviews. First, *How Rights Went Wrong* by Professor Jamal Greene is reviewed by Marc Alexander—a stalwart Eddy Board member whose nose is always buried in a worthwhile book. We are thankful for yet another valuable book review. Next, Robert Shaughnessy reviews *Advanced Topics in Appellate Practice: The Path of Mastery* by Charlie Bird. The appellate community (and not just in California) lost a tremendous personality with Charlie's passing, but in true Charlie fashion, he has left us a legacy to savor for years to come. If you're an appellate lawyer—or a lawyer of any sort devoted to your craft—you simply must read this book.

Eddy Board member and retired L.A. Superior Court Judge Allan Goodman next updates and educates us about new federal legislation affecting sexual harassment cases. And following this article is one by Rachel Naor about board diversity laws and the efforts being taken to impede them. These are hot and important issues.

Similarly cutting edge are PAGA and employment-agreement arbitration clauses, especially in light of the U.S. Supreme Court's recent *Viking River* opinion. Deborah Saxe addresses this issue and provides some advice on this evolving topic. Further on the ADR front, Robert Amador explores the power to decide arbitrability.

We conclude with a masterful historical-interview-themed piece from Eddy Board member Dan Lawton. Demographically, a lot of California lawyers vividly remember living through Watergate; and yet plenty of California lawyers were not even born when it happened. No matter where you fall on that scale, you will find Dan's piece remarkable and enjoyable.

Finally, I cajoled a colleague of mine, Martin Steere, to co-author a piece intended to amuse: Who is the "real lawyer"—the litigator or the transactional lawyer? If you're reading this publication, you probably stand firmly in the litigator camp. But Marty strikes some palpable hits. Between us, I think we covered most of the ground in this perpetual debate, but if you think we missed something, please shoot me a note. We'd love to add your thoughts and points in a letter-to-the editor.

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CALIFORNIA LAWYERS ASSOCIATION

CLA IS MORE THAN JUST THE LITIGATION SECTION

If you're a member of the Litigation Section, you're a member of the California Lawyers Association and if you're not a member yet, we hope you'll join us! Didn't know you were a member? Don't know what that means? Keep reading.

What is CLA?

The California Lawyers Association is the statewide, voluntary bar association for all California lawyers. CLA is a 501(c)(6) professional association that launched in January of 2018. CLA offers unparalleled continuing legal education, the chance to develop an incredible statewide network of relationships, advocacy on matters critically important to the profession, and opportunities for statewide professional visibility and leadership. Our mission is to promote excellence, diversity and inclusion in the legal profession and fairness in access to justice and the rule of law.

How did CLA originate?

In 2017 the California Legislature decided it was important for the State Bar of California to focus on its regulatory duties—licensure, admissions and discipline. It enacted S.B. 36, which provided for the creation of the California Lawyers Association with the 16 substantive efforts law Sections and CYLA as its inaugural members. CLA also took on those roles that are traditionally associated with professional associations.

Beyond my Section, what does CLA do?

We do what statewide bar associations typically do, including advocating on behalf of our members and the profession, giving awards to stellar members of the profession, serving as a communications hub among various stakeholders in the state and representing the state's attorneys on the national and international stage. CLA does all of these things and more!

How can I get more involved?

CLA has a variety of organization-wide committees, many of whom are often looking for members. In particular, our Programs Committee, our Awards Committee, our Membership Committee and our Diversity Advisory Council are great opportunities to get more engaged across the organization. Go to our website, CALAWYERS.ORG to learn more!

Learn more at CALAWYERS.ORG

LITIGATION SECTION

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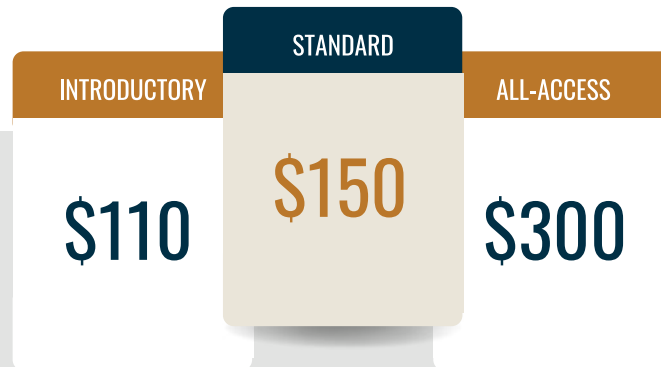
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POSTAGE

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Introducing new membership options for 2022!



We're excited to introduce two new membership offerings! We've consistently heard from you, our members, that you want and need more options.

You can now choose what works for you for the 2022 membership year:

- **New!** The **Introductory** membership is for members who want a simpler offering. It includes access to CLA-wide benefits.
- **New!** The **All-Access** membership is for members who want it all. Be a part of CLA and access all 17 Sections.
- The **Standard** membership is for members who like things the way they are. It includes access to 1 Section of your choice. Add additional Sections anytime for \$40 each.

Current members will not have to do anything; we will roll you over into the appropriate membership plan. However, we wanted to inform you of these adjustments as soon as possible for your convenience.

Learn more at CALAWYERS.ORG