

PRESIDENT'S MESSAGE

by Leslie Kaiser



I have just returned from my 5th and final CLI. For those who may not know what that is, CLI stands for Chapter Leadership Institute. CLI provides a unique opportunity for learning about and strengthening our ALA chapter leadership roles, sharing ideas and experiences with colleagues, as well as expanding our network and increasing our knowledge and leadership skills. It is an intensive two-day program, with sessions starting at 8:00am and ending at 5:30pm. And even though it may sound quite grueling, it is an edifying and worthwhile experience. While the ALA Headquarters sends the President of each Chapter to CLI, the San Diego Board of Directors sends one Director, the Secretary, the Treasurer, the Vice-President, and the President-Elect to CLI. Other participants include ALA's Board of Directors, Regional Officers and key ALA staff. The conference is held in different cities annually and this year it was in Atlanta, Georgia. I have had the pleasure to attend CLI in Las Vegas (twice), Tucson, and Salt Lake City. Every CLI that I have attended has given me new ideas and has taught me so much about our wonderful organization. I always return home feeling excited and ready to try new things! Remember the membership campaign in 2011 "Three Ways to Win?" How about the Educational Conference last year? Both of these were formed with ideas learned at CLI and these are just a couple of examples of the myriad of ideas gleaned over the years.

This year, one of the sessions that was particularly helpful was titled "Stranger than Fiction: Writing Skills For Leaders." The handout for this session included links to e-Newsletters, on-line courses, websites, articles, blogs, and books, all geared to tips and techniques for making your writing a positive reflection on you and your firm. That handout can be found [here](#).

In addition to educational sessions, CLI is also where we learn about what's happening at ALA Headquarters. This year the big announcement was that Chapter Awards are being eliminated effective this year. The ALA Board of Directors decided that the Chapter Awards had become less relevant to

organizations over the past few years. Part of the ALA's new strategic plan is to focus more on education and leading the industry on change and new ideas, to look "up and out" at what is happening in the industry and how we can impact change. The Chapter Awards were felt to be the antithesis of that, looking "down and in" and celebrating ourselves rather than the industry. In addition, feedback from many Chapter leaders was that the Awards had become a self-perpetuating monster and had taken over planning for our Chapters and were diverting resources from trying new ideas. Thus, the Board decided to eliminate the Chapter Awards and replace them with the ALA IDEA Awards – which focus on innovation and new ideas in the legal industry. Keep a look out for more details coming out on those in the next few weeks.

CLI is a lot of work, but it's not ALL work! With the evenings free, attendees were able to explore the town, socialize and network, and be treated to amazing parties by CLI sponsors. We were fortunate to have Gunlocke invite CLI attendees to a local Atlanta restaurant, Ecco, for a wonderful evening of amazing food and great company. IST Management Services threw a fantastic pool party with good old southern food, drinks, and swimming. And what would a party be without a petting zoo! Yes, a petting zoo complete with camels, a zebra, a monkey, a lemur, a hedgehog, and a variety of other animals (pictures below!).

I'd like to leave you with some quotes from attendees:

"I enjoyed the conference and feel more in touch with ALA and what it has to offer. I am excited and looking forward to bringing more to the ALA San Diego Chapter!" – Tammie McQuain

Got CLM?

If you are interested in becoming a CLM, you may want to consider joining a CLM Study Group, or checking out study materials from our library. Please contact our San Diego Chapter Librarian, [Gerald Hester](#) for materials. For more information on eligibility and test dates, [click here](#).

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"I really enjoyed getting to know everyone. I had a great time and learned so much about ALA." – Brenda Winter

"I think we came back with some good ideas to implement and use for the future!" – Shaila Schaible

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"Motivation is the art of getting people to do what you want them to do because they want to do it."
- Dwight D. Eisenhower



Anna Rushworth



CNN Building



Shaila Schaible & Monica Menzer

It's Important to Know!

As ALA members, we have excellent educational resources available anytime with just the click of a mouse! Four of those great resources are the Legal Management Resource Center (LMRC), ALA Management Encyclopedia (ALAME), Retreat Planning PLUS, and ALA Management Connections (Job Bank).

The LMRC was developed and maintained by the Association of Legal Administrators (ALA), and can be accessed by going to <http://www.alanet.org/research/directory.asp>. It is designed to immediately provide answers to your management questions or to quickly direct you to other resources, most on the internet, where the information you are looking for can be found.

This site includes on-line tools, forms and checklists, and links to white papers and research studies in all of the areas of management that administrators deal with regularly. It also includes a link to the Peer Consulting Directory (<http://www.alanet.org/peerconsulting>), where our fellow members with expertise in various areas make themselves available to answer questions. There is also a link to ALA's Management Solutions Reference Desk (<http://www.alanet.org/research/studies/refdesk.aspx>), where ALA expert researchers will give your issues personalized attention and provide answers to your legal management questions.

The ALA Management SolutionsSM (ALAME) was specifically developed for legal administrators, managing partners, or anyone who needs concrete information on legal management issues. Also available from a link on the ALA website, the Encyclopedia is filled with carefully indexed, highly searchable answers to your financial management,

marketing, strategic planning and human resources questions. A powerful tool, the Encyclopedia turns theory into practical tips and provides suggestions you can easily implement to get results. The articles cover a subject in depth and completeness, pulling together many additional materials. They are written by authors solicited by the ALA for their expertise and experience. And best of all, it's FREE to ALA members. Check it out!



**Please join your fellow
members and Past Presidents on
Tuesday, August 20, 2013 to
celebrate your chapter's 40th
Anniversary**

**In lieu of the luncheon membership meeting, we will be
having a cocktail party on August 20th from 5:15 p.m. to 7:00
p.m. in the Le Fontainebleau Room, Second Floor of The
Westgate Hotel, in downtown San Diego. Beverages, hors
d'oeuvres, friends, and memories will abound.**

Please RSVP to Karen Lemmon at klemmon@eps-law.com





A Note from Brenda Peterson at Peterson Reporting: Congratulations ALA on your 40th Anniversary!

August 20th is an important date on our calendar. As grateful sponsors of your special anniversary, we look forward to celebrating and giving the gift of real stress relief – that means a little surprise is coming!

Truly, your stress relief is our primary objective. Everything we do is intended to make your job easier. Our goal is to make sure that if you hear our name mentioned, it is the result of your litigation team recounting a heartfelt “Peterson saved the day” story!

More often than not it’s the work you don’t see that differentiates a good reporter from a great reporter. I recently received a call from expert witness Carl Beels. Carl is an accident reconstructionist and human factors engineer who began his career in 1983. Carl talks really fast and has a highly technical vocabulary. As an expert witness, Carl has had his deposition taken over 400 times, and has reviewed many mistake-filled, unusable, problematic, NOT beautiful transcripts.

Carl called to tell us how much he appreciated our 20-year veteran reporter, Judy Reiersen. Indeed, he raved about Peterson Reporting’s work product. He stated that the transcript was “stunning!” Through our attention to and understanding of technical detail we accomplished our objective of making his job easier. When an expert does not have to take his/her valuable time to make corrections, this directly improves efficiency and cost savings for your clients. It is this type of “behind the scenes” benefit – hardly considered until things go awry – that produces positive results.

At Peterson, our work is our art. Accurate transcripts are beautiful transcripts! Our reliability, accuracy, dependability in reporting, videography, trial presentation, and ever-evolving technological training, remains proven for over two decades.

To make your job a little easier and a little less stressful, Peterson provides training on the most in-demand technologies, including: assisting litigators or expert witnesses in participating remotely from the comfort of their desk via a webcam using our internet deposition services; teaching trial attorneys how to present their cases in court wirelessly with their iPads; training staff on how to use our encrypted database and email to transfer confidential documents. All of this is in addition to delivering beautiful works of art all over our city, state, and nation, daily.

We hope you never look at transcripts the same way again. We know Carl won’t; he’ll be looking for a higher standard.

We are excited about our continued partnership with ALA. At Peterson, our goal is for us all to work together and make our legal community better.

We are proud to be part of your team and provide you with amazingly talented reporters, videographers and trial presentation experts; and we are thrilled to be celebrating this special anniversary with you! We are grateful for your support and for our relationship. On behalf of Peterson Reporting, thank you for many years of business and partnership.

Congratulations, ALA, on your 40th Anniversary!

Confidential & Proprietary ♦ www.petersonreporting.com ♦ 800.649.6353



STATE OF THE JUDICIARY IN SAN DIEGO COUNTY

The San Diego County Bar Association has released a report on the State of the Judiciary in San Diego County. The report provides a snapshot of the current state of San Diego's courts and urges the legislature to reinvest in the judicial branch.

Over the last 5 years, California's Judicial Branch's budget has been cut by nearly 1.2 billion dollars, almost 30% of its former operating budget. This is considerably disproportionate to other entities funded through the state budget process, and the report explains why it is critical that funds are "reinvested." The budget cuts have led to court closures, staff layoffs and furloughs, and case backlogs, adversely impacting the ability for individuals and businesses to resolve their legal disputes in a timely manner.

The State of the Judiciary in San Diego County report gives an overview of the operational effects of Court Funding Cuts and also details the "real world impacts" of funding cuts, with real examples of how court budget cuts have had a direct effect on San Diego families and businesses. Thank you to all of the members of the SDCBA who contributed their stories of how their clients have been affected.

This report will be used in the SDCBA Court Funding Action Committee's (CFAC) efforts to educate legislators on the importance of a fully funded court system and to call for reinvestment.

To review the full report, click the button below or visit www.sdcba.org/2013judiciaryreport.

A one page summary of the report can be found at www.sdcba.org/ExecutiveSummary.

DOWNLOAD



**SAN DIEGO CHAPTER OF THE ASSOCIATION
OF LEGAL ADMINISTRATORS**

PEER CONNECTION – HAPPY HOUR

AUGUST 8, 2013

5:00 p.m. to 7:00 p.m.

Presidential Suite – Westin San Diego

400 West Broadway

Please join us for happy hour to meet our newest members and find out more about the San Diego Association of Legal Administrator's Peer Connection program. Mingle over appetizers and drinks in the gorgeous Presidential Suite at The Westin San Diego.



*The Chapter will be raffling off two Region 6 Conference Scholarships (plus \$400 travel stipend) for new members and attendees. Members that volunteer to be a mentor will receive an additional chance at winning a scholarship.

Please RSVP to Karen Lemmon at klemmon@eps-law.com



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MEMBERSHIP REPORT JUNE 2013

By Anna Rushworth

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N
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New Members

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Direct Dial: (619) 232-8151
FAX: (619) 232-4665
E-mail: kdegroot@wingertlaw.com

Current National Members: 107
Current Chapter Members: 103

Save the
Date!

September
17, 2013 is
our Business
Partner
Appreciation
Luncheon at
the
Westgate!
Keep a look
out for your
invitation
which will be
mailed in
August.

Peer Connection Program

We make a living by what we get, we make a life by what we give.
- Winston Churchill

Winston Churchill's quote truly summarizes that what we give makes the greatest difference in our lives. You too, can make a difference by participating in the Peer Connection Program.

The Peer Connection Program is designed to supplement what we all do naturally – we all learn from others as well as share our knowledge with others. The goal is to shorten the learning curve and to support the success of all members.

Anyone interested in becoming a mentor or mentee will need to complete a profile to assist in making the best matches. There will also be an opportunity to indicate a preference for a mentor. Based on the profiles and preferences, we will make the appropriate matches and communicate them as matches are made.

Participating in the Peer Connection Program will require a commitment from both the mentor and mentee. We expect this program to provide a richly rewarding experience.

Contact Anna Rushworth (rushworth@higgslaw.com) or at (619) 595-4393 for more information!



Robert Half® Legal

COUTURE *for a cause*

San Diego Legal Professionals Unite to Support Children in Need

The San Diego Chapter of the Association of Legal Administrators is again spearheading, in partnership with five other legal organizations, Couture for a Cause, a charity fashion show that will bring legal professionals from throughout the San Diego legal community to the catwalk to raise funds for two local charities, Voices for Children and STAR/PAL.

The sixth annual Couture for a Cause will be held at the San Diego Hall of Champions in Balboa Park on Thursday, September 16, 2013, from 6:00 p.m. to 9:00 p.m. The event will feature Craig Higgs, of Higgs Fletcher & Mack, as the Master of Ceremonies and models from throughout the legal community.

Voices for Children works to ensure that abused, neglected and abandoned children who have become dependents of the San Diego County Court will have a safe and permanent home. Voices transforms the lives of these children by providing them with volunteer Court Appointed Special Advocates or CASAs.

STAR/PAL (Sports Training, Academics, Recreation / Police Athletic League) empowers underserved youth to build a safer and more prosperous community by engaging with law enforcement and collaborative partners. STAR/PAL provides over 10,000 youth services annually in inner-city neighborhoods throughout the city and county of San Diego offering educational, athletic and recreational programs which focus on promoting youth safety, positive life choices, and academic success.

Along with the San Diego Chapter of ALA, the event's co-sponsors include Lawyers Club of San Diego, the Southern California Chapter of the Legal Marketing Association, the San Diego Paralegal Association, the San Diego Legal Secretaries Association, and the Mother Attorneys Mentoring Association.

The festivities will begin at 6:00 p.m. with complimentary hors d'oeuvres, a cocktail hour and a silent auction. Tickets are \$50 each or a bundle of eight for \$350. For tickets and sponsorship information, please visit the Couture for a Cause website, www.coutureforacause-sd.org.

ECLA

Law Firm Management:
Essential Competencies for
Legal Administrators



August 19-21, 2013 | Los Angeles, California

Further your career by building and strengthening core competencies in:

- Accounting, business and financial management
- Human resources
- Operations management
- Leadership and organizational development

"The best three days of ALA education I have ever received" - Patrick Johansen, CLM, CPP

Register at www.alanet.org/ecla today!

Your connection
to knowledge, resources and networking





EDUCATIONAL OPPORTUNITIES

Take a look at the Chapter's upcoming educational opportunities and mark your calendar! Please email me with topic suggestions.

- Monica Menzer, President Elect / Education Chair
mmenzer@allenmatkins.com

Aug 20 Monthly Meeting
"San Diego Chapter 40th Anniversary Celebration"
Speaker: TBA

Note new time: 5:00 – 6:30 pm
Location: The Westgate Hotel

Sept 17 Annual Business Partner Luncheon
"Nonverbal Communication"
Speaker: Jeff Lanza, Retired FBI agent and professional speaker
Time: 11:45 registration; 12 – 1:15 pm program
Location: Hilton Resort San Diego (on Mission Bay)

2013 Law Firm Financial Management Conference

August 22-24, 2013
Sheraton Downtown Los Angeles
Los Angeles, California

Registration now open!

- Choose from more than 20 top-notch educational sessions, including economic trends, succession planning and financial reporting
- Gain knowledge to increase your firm's profitability
- Network and learn from your peers
- Earn CLM and CPE credits
- See the latest finance-related products/services at the Exposition

Register today! www.alanet.org/finance

Your connection
to knowledge, resources and networking





ASSOCIATION OF LEGAL ADMINISTRATORS SAN DIEGO CHAPTER

**Tuesday, September 17, 2013
Business Partner Luncheon**

Note change in time

11:30 am – 11:45 pm Registration
11:45 am – 1:15 pm Program

**THREE Region 6 Scholarship (including a \$400 travel stipend) will be awarded!*

"Nonverbal Communication: Reading and Projecting for Better Outcomes"

Is a person buying into your message? Are they being deceitful? Is your body language consistent with your message? A retired FBI agent and expert interviewer will help enhance communication skills and business relationships by increasing the ability to understand key signals that make up two-thirds of our projected communication.

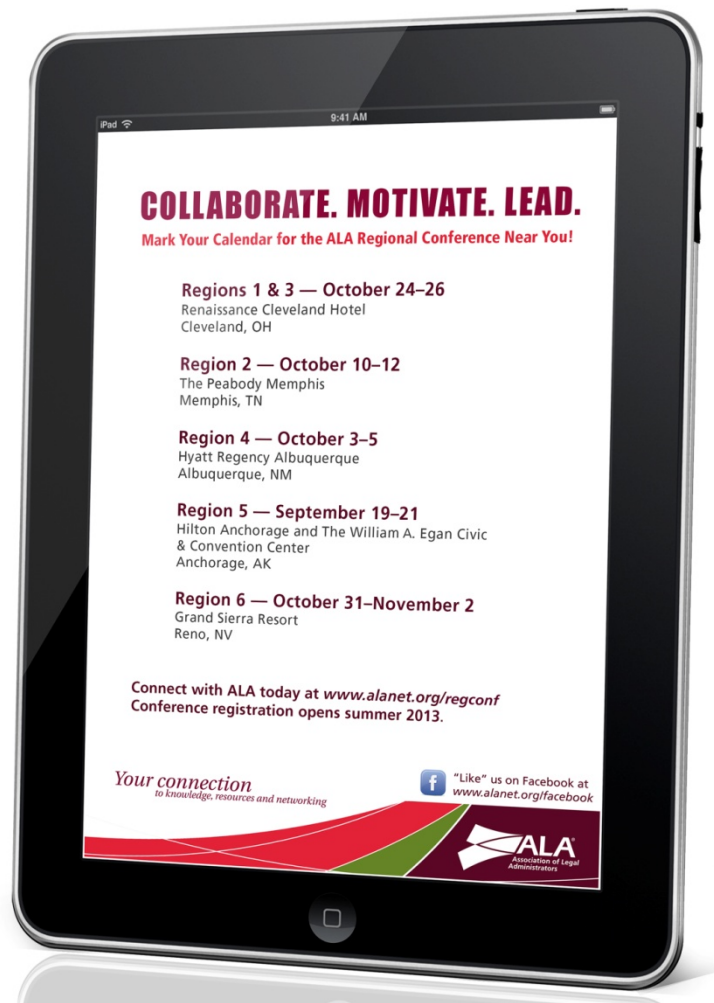
Speaker: Jeff Lanza was an FBI Special Agent for over 20 years. He investigated corruption, fraud, organized crime, cyber crime, human trafficking and terrorism. He appears regularly on the Fox News Channel and has informed the public on other national programs including the Today Show, Good Morning America, Dateline and Larry King Live, among others. He is passionate about keeping people and organizations safe from risk and has presented to thousands around the globe. His latest book, "Pistols to Press," has received critical acclaim from national media figures. Jeff loves talking to audiences the world over, but is most comfortable in his home city, where he serves as a certified Kansas City barbecue judge.

Location: Hilton Resort & Spa San Diego (on Mission Bay).
Complimentary self-parking available.

Menu: The Tropics Salad
Lemon Sage Chicken with Sun-dried Tomatoes, Artichoke
Hearts and Portabella Mushrooms
Mixed Fruit Tart

RSVP: Karen Lemmon @ klemmon@eps-law.com

Membership Meeting Sponsored by:



MARK YOUR CALENDAR! ALA REGION 6 CONFERENCE OCT 31 – NOV 2, 2013



San Diego Chapter

A Chapter of the Association of Legal Administrators

CALLING ALL LAW FIRMS...

IS YOUR LEGAL
ADMINISTRATOR
A MEMBER?

THE SAN DIEGO CHAPTER OF THE ASSOCIATION OF LEGAL ADMINISTRATORS is looking for local Administrators to join our professional organization. If your Manager/Legal Administrator is not yet a member of ALA, your firm is missing out on a myriad of benefits available to members, such as:

International Association

- Legal Management Resource Center (LMRC)
- Educational Conferences and Expositions
- Retreats and Specialized Programs
- Certified Legal Manager (CLM) Program
- Periodicals and Publications
- Free Research on all sorts of law firm topics performed by paid staff at ALA
- ALA Diversity Initiative
- ALA Management Encyclopedia

San Diego Chapter

- Southern California Law Firm Compensation, Billing Rate, and Benefits Survey
- Monthly Speakers
- Continuing Education
- Webinars
- The Mandate Newsletter
- Numerous Regional and National Educational Scholarship opportunities
- Support from other Administrators
- Business Partner Directory
- Participation in Community Connections
- Annual Labor Law Update

THESE PROGRAMS AND BENEFITS ARE JUST THE TIP OF THE ICEBERG!

Visit www.alanet.org for a complete overview of the benefits available at the International level and visit the San Diego Chapter's website at www.sandiegoala.org for more information about our local Chapter. Contact the Membership Chair, Anna Rushworth, at rushworth@higgslaw.com or 619.595.4393 for more information.

Prospective Members are invited to join us for the **CHAPTER'S 40TH ANNIVERSARY PARTY ON AUGUST 20TH AT 5:15 P.M.** to meet former Chapter Presidents, current members, and mingle over cocktails and appetizers at the beautiful, historic **WESTGATE HOTEL AT 1055 2ND AVE., SAN DIEGO, CA 92101**. Please RSVP to Karen Lemmon at klemmon@eps-law.com.

MAKING THE CASE: WHAT LAW FIRMS SHOULD KNOW ABOUT UPS

BY JARROD PURDON

PROFESSIONAL SERVICES MARKETING MANAGER



Today, your role as your firm's legal administrator is more crucial than ever to your firm's financial well-being. Not only are administrators tasked with running their firm's daily operations, but they also are expected to continue to find ways to do more with less

while improving the firm's bottom line.

Whether firms realize it or not, logistics can have a significant impact on their cost management, growth and reputation goals. Below are some surprising areas where logistics can have a positive impact on law firms:

Branding & Marketing

With much competition in the marketplace, it's only natural that marketing has become a top priority for many law firms. Although many firms may not realize it, their shipping carrier can play a role in their marketing strategy.

For example, there are options such as customizable branded envelopes and labels that help increase the visibility of a firm's brand and set its shipments apart from others. Something as simple as changing the envelopes that a firm's documents and materials are delivered in can go a long way in building brand equity and make a powerful impression on clients. Learn more about how this can work for your firm by clicking here.

Client Service

UPS delivers overnight by 8:00 a.m. to more zip codes than FedEx. When you have urgent documents requiring a client signature, sometimes midday delivery just won't do. That's why we recently expanded the number of locations for our early morning, next-day deliveries — to help your clients avoid the waiting game and give your firm a true competitive advantage. UPS also delivers to more ZIP Codes and U.S. businesses next day by 10:30 a.m. So whatever your needs, you're able to reach more locations earlier than with any other carrier.

Haven't met with UPS in a while? You could be missing out on some great tools to help your firm grow, be more efficient, and provide better client service. Watch a short demo on our free, web based shipping technology here. If you are interested in a free Business Process Analysis, email me at jpurdon@ups.com or call at 678-361-7615.



As members of the ALA, each of us should be aware of the Association's Mission and Goals, and we must be in compliance with the Code of Professional Ethics. This information is on the San Diego Chapter website and the International Association website:

<http://www.alanet.org/chapters/mission-goals.pdf>

http://www.alasandiego.org/about_mission.html

http://www.alasandiego.org/about_ethics.html

Have you joined **SDALA** on Facebook and LinkedIn yet? If not, check it out! Start a Discussion or chime in on a current discussion. Connect with your peers, Business Partners, and ALA Head Quarters. Contact [Amy Spintman](#) for more information.



SPECIAL COUNSEL II®

FIVE DOCUMENTS SURE TO APPEAR IN YOUR LAWSUIT

BY MAURO RAMIREZ, JD

ARTICLE ORIGINALLY PUBLISHED BY AND REPRINTED WITH PERMISSION FROM
FISHER & PHILLIPS LLP LABOR LETTER, AUGUST 2013



Although simple and oftentimes overused, sports metaphors can provide insight into complicated topics. When it comes to employment litigation, cases often boil down to “blocking and tackling.” In other words, the fundamental (but unglamorous) activities often make a far greater difference than sophisticated lawyering.

Employment litigation can easily prove both complicated and time consuming. Interpretations regarding legal concepts often evolve rapidly, based on court decisions, agency interpretations, or actions by Congress or state legislatures. And even though claims are based on these changing laws, basic documents created by an employer lie at the core of an employment dispute. In litigation, these documents can make the difference between success and failure.

The Big Five

Five key documents arise most frequently, especially in cases involving an alleged adverse employment action: the job description; the handbook; performance evaluations; disciplinary documents; and responses to administrative charges. They vary in importance depending on the claims asserted and the underlying issues, but they're almost always included among documents produced in employment litigation.

In fact, these documents are included in the “Pilot Project Regarding Initial Discovery Protocols For Employment Cases Alleging Adverse Action,” which some Federal District Courts are already requiring. This program introduces pre-trial procedures aimed at encouraging efficient and less costly discovery. The Pilot Project accepts that there is a core set of documentation exchanged in litigation and asks that a mandatory list of documents be exchanged even without a request by the employee's counsel.

Included in the mandatory list are the following: 1) “Job description(s) for the position(s) that the plaintiff held”; 2) “Workplace policies relevant to the adverse action in effect at the time of the adverse action” and “The table of contents and index of any employee handbook...”; 3) “The plaintiff's performance evaluations...”; 4) “The plaintiff's...formal discipline” and “Documents concerning the...termination...of the employment relationship at issue in this lawsuit”; and 5) “Responses to...administrative charges and complaint by the plaintiff that rely upon any of the same factual allegations or claims as those at issue in this lawsuit.”

Absent the Pilot Project, any diligent plaintiff's attorney will surely request these documents. So, knowing that these documents will most certainly be read by an employee's lawyer, a judge, or a jury – why not make certain that they are going to help make a potential litigation successful?

Like tackling and blocking in football, these documents are fundamental but not glamorous – generally requiring meticulous drafting or frequent revision. The impact that they make in litigation, however, can lead directly to success or defeat. Let's take a closer look at each.

Job Descriptions

Of the five documents, job descriptions are often the most overlooked. With positions often evolving or with companies changing structures, it can be difficult to keep up with an employee's core duties and functions.

But a fundamental question in litigation is going to be, “What did this person do?” Although a supervisor can provide this information through testimony at a later time, it is always best to have a contemporaneous document that clearly sets out both the employee's job duties and expectations.

This information can prove important for various reasons. With respect to claims for failing to either hire or promote an employee, the duties that the employer felt the applicant could not successfully accomplish serve as a central issue. The

essential functions of a job are an important aspect in many litigations involving the Americans with Disabilities Act.

Although not determinative, the job description helps in establishing duties or responsibilities in misclassification claims under the Fair Labor Standards Act. In unlawful discrimination or retaliation claims where an employer terminated an employee because of failure to properly execute job duties, it's helpful to have documentation establishing that the employee was indeed the one responsible for fulfilling the duties in question.

Let's say you fire a salesperson for failing to achieve consistently positive customer satisfaction scores – it is helpful in subsequent litigation to use the job description as a basic document to establish that you expected the employee to achieve such scores, and that the employee understood the expectation. Although such an expectation may appear obvious to a manager or human resources representative, a third-party who later evaluates the claim may not be familiar with your business or expectations.

Handbooks

Handbooks serve a critical role in any place of employment since they set out basic policies for employees. Unfortunately, however, handbooks can negatively impact employment litigation as much as they can help support important arguments.

Handbooks often serve as the document establishing that the employer has policies prohibiting the conduct the employee complains about, such as policies on equal employment opportunities, medical leave, and requesting accommodations. Clear policies regarding reporting potential harassment or discrimination underpin important legal defenses – especially when employees fail to use reporting avenues.

But a handbook that fails to provide succinct and relevant policies does not serve as good guidance for employees; it even poses a danger during potential litigation. This most often occurs where handbook policies set out intentions or

expectations that are not consistently applied or were not applied properly in the events resulting in the lawsuit. This could involve policies related to attendance, tardiness, or general expectations regarding behavior.

Of course, policies should be updated and revised regularly. Even if there is no discriminatory motive, a manager's reliance on an outdated – or unlawful policy – will undoubtedly assist an employee in mounting a challenging case. For example, a manager may terminate or discipline an employee based on a policy that prohibits employees from discussing their pay with coworkers. In a subsequent Title VII litigation, the manager may not have intended to discriminate against the employee based on race or gender, but the policy applied violates the National Labor Relations Act. Even though the NLRA is not at issue in the litigation, it still creates an uncomfortable circumstance where you may be left to argue that you did not violate Title VII but may have violated the NLRA.

Many times handbook revisions should include trimming down the existing document. Handbooks sometimes become the storage place for an overabundance of policies or procedures (some of which are best kept in a separate operations manual), which could provide a roadmap for counsel to explore areas that might not arise otherwise.

Performance Evaluations

Performance evaluations are routine documents usually included in an employee's personnel file. This document becomes important in cases involving a termination for poor performance. In such a circumstance, the performance evaluation can either support the decision or serve to raise suspicions that an attorney can exploit.

Often times, a manager's reluctance to provide an honest and thorough evaluation results in documents stating that most employees are "meeting expectations" or "exceeding expectations" This high rating

will pose a contradiction when trying to convince a jury or judge that, in reality, the employee was actually not meeting expectations. A skeptical third party will likely take these documents at face value and believe that the employee met expectations or exceeded expectations. If the manager has to explain the inconsistency by admitting that the evaluation is inaccurate, a judge or jury may surely begin to question whether the manager is being truthful.

Disciplinary Documents

Disciplinary documents or termination sheets generally serve as a key piece of evidence detailing the employer's reasons for taking the actions that the employee claims were done for discriminatory or retaliatory motives.

If the adverse action involved a termination, the termination sheet will unquestionably be a key document. A clear explanation of the reason for the termination that is articulated at the time the event occurred can help anchor your credibility.

But when managers create these documents they may not have potential litigation in mind. This can result in vague shorthand comments such as "policy violation" or "not following directions." Where the sheet provides options for a manager to check off the reason for the termination, filling out this information in a hurry could result in selecting an inaccurate reason.

For example, the manager might select "policy violation" instead of "insubordination" where an employee has refused a direct order. Although a vague comment or an error in selecting a reason do not prove fatal to a litigation, they create scenarios where opposing counsel can exploit the error. These mistakes or oversights can be used to both question managers' credibility or embarrass them by forcing them to admit that they were careless.

Response To Administrative Charges

Responses to administrative charges, such as statements of position to the Equal Employment Opportunity Commission, differ from the other documents discussed since they are created after the underlying facts have taken place. These responses also usually incorporate the other common documents as exhibits or sources of information. Such responses are critical since they serve as precursors for the story that the employer will flesh out in litigation.

Since they serve as the initial opportunity for an employer to address allegations of unlawful conduct, these responses have long-lasting effects. Such documents lock the employer into certain positions. In other words, if a termination or disciplinary decision is not articulated accurately or fully in a response, clarifying or elaborating upon the reasoning at a later time may appear suspicious. Using the "blocking and tackling" metaphor here, responses to administrative charges should be concise and simple, addressing the allegations directly and accurately.

The Bottom Line

To sum up, the legal environment is often changing and uncertain. Nevertheless, these fundamental documents will usually appear during an employment litigation, and the time and effort spent in drafting them will reduce later difficulties.

For more information contact the author at mr Ramirez@laborlawyers.com or (713)292-0150.



FALA HAS A NEW NAME!

It is now known as The Foundation of the ALA, and there are some exciting new things happening with it! They have created the Susan French Emerging Leader Scholarship Fund and Legal Services Corporation (LSC) Project. Check out these two new programs on the ALA website!

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EDITOR'S NOTES

E-Discovery, E-Filing, E-Quivocal

By Rheesa Eddings

I love technology. It has so much potential to make life easier, to help us get things done faster and better and more efficiently. The tricky part is knowing which technology will gain a foothold and which will be an endnote in a history book. Remember Betamax? MSDOS? Palm Pilots? All brilliant at the time, and all stepping stones to where we are today.

Now think about where we'll be in five years. In ten. I think that in 10 years, all filings will be mandatory e-filings, state and county courts will have perfected direct-file platforms for law firms with a couple of third party vendors for pro-pers. I think e-discovery will be the rule, not the exception. I think database vendors like Concordance and Summation will allow us to import, OCR, and image .pst files and ISP logs as a routine part of the discovery process.

In some ways I think it's more important to understand the concept of a technology than the nuts and bolts. For example, Microsoft has set a precedent for how menus work in software, and almost all other software providers mimic that on some level. If you know how to use a Microsoft program, you'll be

able to figure out how to use a non-Microsoft program. If you know how to use EM/ECF you should be able to figure out state and local court e-filing.

As to where you should spend your technology dollars, it's going to vary based on the scope of your firm's practice, but make no mistake that you'll have to spend those dollars at some point, and make no mistake that anything you purchase will be supplanted by. . . better, faster, more efficient technology.

The Wall Street Journal recently published a piece called "Legal Secretary, a Dying Job." I disagree that it's dying; but it's definitely being redefined – by technology. Savvy attorneys and support staff should be open to learning and developing new skills to handle the new demands of the legal workplace, and so should you be. Obsolescence of knowledge is far more damaging than obsolescence of technology.

- ❖ Rheesa is the office manager for Fisher & Phillips, LLP. redings@laborlawyers.com

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