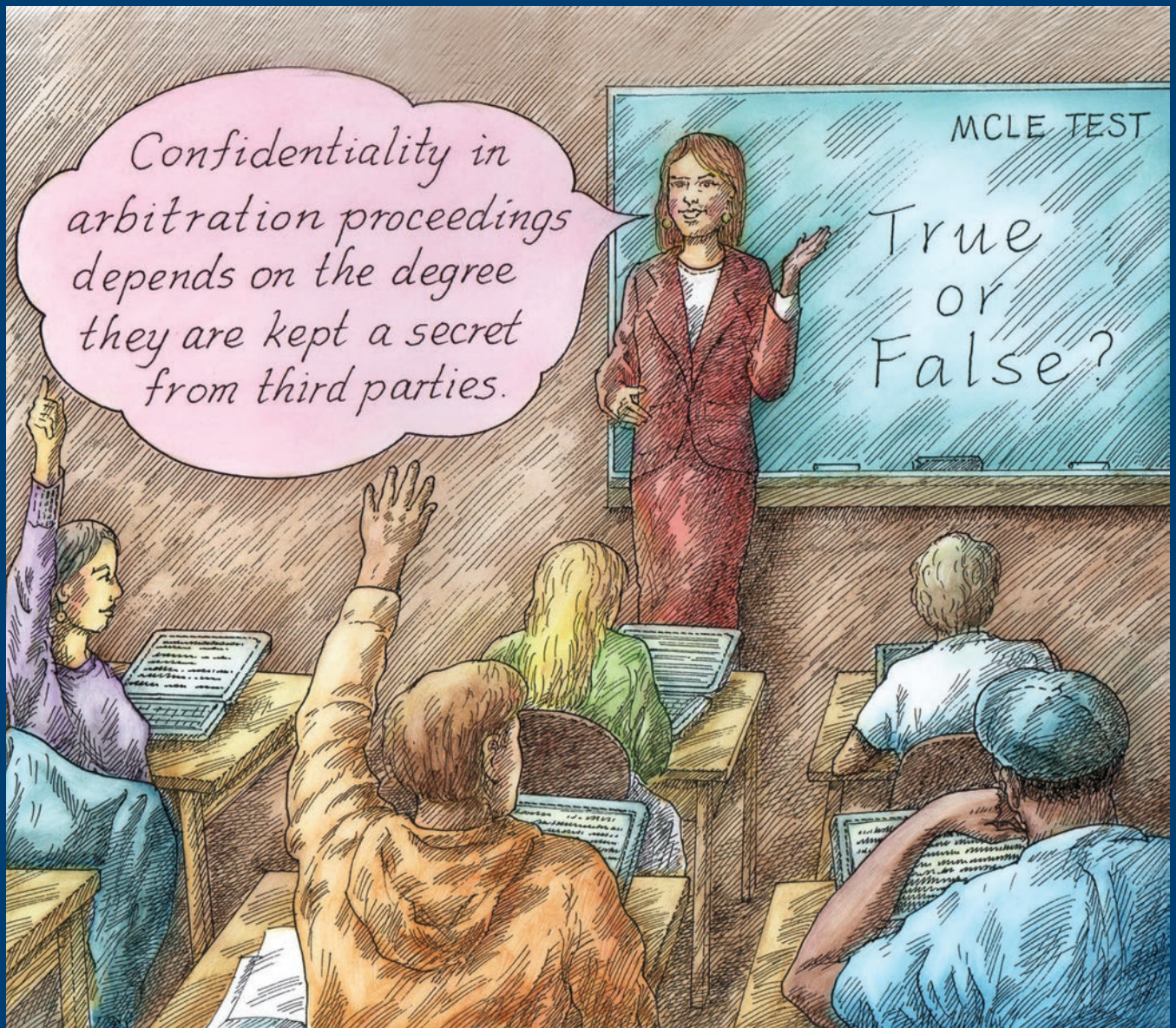


California Litigation

THE JOURNAL OF THE LITIGATION SECTION, STATE BAR OF CALIFORNIA





Editor's Foreword:

Hail to the Chiefs

By Benjamin G. Shatz



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These are trying times at the State Bar. Our historic unified State Bar, which served both its member lawyers and the public, is becoming solely a regulatory agency focused on protecting the public against lawyers. As Kathy Brewer outlines in *From the Section Chair*, the sixteen sections (and the California Young Lawyers Association) are working hard to transform themselves into a new “independent entity.” This metamorphosis is a lot of work—and it’s being done primarily by volunteers. Now’s a good time not only to applaud those involved but also to lend a shoulder in pushing that boulder. Without your continued support, the Sections—including your Litigation Section—may wither and perish. Don’t shrink from the service of your Section. The future of your “trade association” is at stake.

With that sincere and dire exhortation now exhorted, we begin this issue with a lesson about *Confidentiality in Arbitration* from Marc Alexander. And we do mean a lesson: A self-study MCLE test follows the article, which you can take online. You’ve always *deserved* MCLE for reading California Litigation; now you can actually get it. We hope that such tests will be a recurring feature and a valuable benefit for our readers.

Continuing the ADR-theme, retired Justice Jim Marchiano illuminates a handful of *Unintended Consequences of ADR*, including the disappearing trial, the disappearing appeal, the disappearing precedent... you get the idea.

Next, Justice Jon Streeter along with appellate lawyers Honey Amado and Leah Spero address the “delicate matter” of how to brief issues that happen to be pending before the California Supreme Court.

We then present a pair of articles authored not by lawyers, but by trial consultants. Dr. Noelle Nelson plugs in to *Technology in the Courtroom: Does it Engage or Overwhelm Jurors?* Paulette Taylor of Taylor’d Trial Consulting (cute name!) hoists some *Red Flags in Defending Employment Cases*. Have you worked with particularly effective trial or jury consultants? If so, please encourage them to submit an article.

Showcasing the wide world of litigation in California, we offer a couple of substantive articles, the first about a development in *Family Law Litigation: After Shimkus*, by Lauri Martin. The second, from the Section’s Federal Courts Committee, explores *How Intangible Harms Can Result in Tangible FCRA Damages in California’s Post-Spokeo Landscape*, by Elizabeth Sperling and Alex Pacheco. Then, to cover practice tips, a former editor-in-chief of this journal, Joan Wolff shares pointers on effectively using *The Table of Contents* in your briefs.

We conclude with a piece by lawyer/presidential historian James Attridge, known for his many articles about the legal careers of American presidents. These careers don’t intersect with litigation in California, because most presidents, of course, never practiced law here. But one did. You can find his name in several opinions referencing him as president (*Yorty v. Chandler* (1970) 13 Cal. App.3d 467, 469; *People ex rel. Youn-*

ger v. County of El Dorado (1971) 5 Cal.3d 480, 498, fn. 20; and *Brodeur v. Atlas Entertainment, Inc.* (2016) 248 Cal.App.4th 665, 669) or vice-president (*James v. California* (2013) 219 Cal.App.4th 1265, 1279). But to see him in action as a young lawyer, you need to dig up *Schee v. Holt* (1942) 56 Cal.App.2d 364. James continues the tale in *Richard Nixon: The Whittier Washout*.

President Nixon’s bar number was 15989. Don’t confuse him with active California lawyers Richard A. Nixon (No. 98720) or Richard T. Nixon (No. 135086). And let’s give hail-to-the-chief shout-outs to California lawyers George E. Washington (No. 46281), John F. Tyler (No. 2633), James W. Polk (No. 95970), Zachary W. Taylor (No. 86584), James R. Garfield (No. 76492), Benjamin Harrison (No. 4627), William C. McKinley (No. 36049), William J. Taft (No. 23884), Gerald T. Ford (No. 103681), William D. Clinton (No. 53306), a couple of James Madisons (Nos. 29897, 54032), John Quincey Adamses (Nos. 7373, 60391), Theodore Roosevelt (Nos. 138245, 205485), William Harrisons (Nos. 39147, 64180), Woodrow Wilsons (Nos. 19208, 19276), and George Bushes (Nos. 4385, 4749), not to mention a trio of James Buchanans, quartets of James Monroes and Andrew Johnsons, a dozen John Adamses, and a baker’s dozen of John Kennedys. Love your patriots, but don’t care for presidents? Well, we’ve got Benjamin C. Franklin (No. 43356), and for Broadway musical fans we’ve even got—“*Wait For It*”—an Alexander E. Hamilton (No. 114910).

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