CLA-LA Legal Aid Manual

CHAPTERS

2022-2023
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1. HOUSING

CONTENTS

Finding and retaining housing is one of the most important legal issues we handle for our clients. If the client is already in an eviction proceeding, we immediately refer them out to attorneys who will represent them in court.

In all other cases, CLA-LA listens to the client and then encourages them to address their disputes by first negotiating and then mediating with the other party. Going to court not only prolongs the dispute, it will also usually exacerbate the difficulties in our clients' lives. A client is much more likely to resolve the dispute more quickly, and less stressfully, if they communicate respectfully when negotiating.

If the client's issue is not addressed by this chapter, please refer to the "California Tenants" booklet prepared by the California Department of Consumer Affairs. The booklet can be seen at *http://www.dca.ca.gov/publications/landlordbook/catenant.pdf*.

I. Tenants

Housing laws in each state seek to ensure basic standards to protect both the landlord and the tenant by defining the mutual responsibilities and obligations in an effort to ensure good relationships and safe housing. The laws seek to fairly balance the rights and obligations of landlords and tenants. Sometimes the most important advice we can give clients is to tell them honestly that they have a very small chance of pursuing a successful claim. It is better to be honest than to mislead them into thinking that they may have some recourse when they do not.

A. Notice to Terminate

What does a "notice to terminate" mean?

Receiving a notice to terminate the tenancy is not necessarily an eviction. Generally, a landlord can terminate a periodic (month-to-month) tenancy by giving the tenant 30 or 60 days' advance written notice. However, in certain circumstances the landlord can terminate the tenancy with only three days' advance written notice. (see below for details)

Cities may adopt rent control or rent stabilization ordinances ("RSOs") which impose different and often stricter requirements for terminating tenancies than state law proscribes. Typically these ordinances allow eviction upon a ground set forth in the ordinance. They also may impose stricter requirements for the content or service of notices to quit. See if your client lives in an area that has adopted an RSO.

Subject to rent control or rent stabilization ordinances (RSOs), if the client has a month to month tenancy, they may receive a notice to terminate even if there has been no breach of the lease. The client must receive at least 30 days' notice if the client has resided in the dwelling for less than one year; if the client has resided there for 1 year or more, at least 60 days' notice is required. 90 days' notice is required for Section 8 housing. A written lease agreement may provide for different (longer) notice periods than required by law. Cal. Civ. C. §§ 1946-1946.1.

There are three situations where the landlord can terminate the tenancy with a 3-day notice:

- 3-day notice to pay or quit (for non-payment of rent);
- 3-day notice to cure or quit (for a curable breach of the lease); or
- 3-day notice to quit (for an incurable breach of the lease).

Read the notice carefully to understand the particular situation.

The client must receive a notice that his tenancy is being terminated before an eviction proceeding can commence. Cal. Civ. C. § 1946.1. If the tenant doesn't voluntarily move out after the landlord has properly given the required notice to the tenant, the landlord can file an unlawful detainer lawsuit to evict the tenant.

Was the notice to terminate based on nonpayment or a breach of the lease?

If so, the landlord must first serve the client with a **3-day notice** before an eviction proceeding can commence. Cal. Civ. Proc. §§ 1161(2)-(4). The landlord can terminate the tenancy with a 3-day advance notice to either quit (if the breach is un-curable) or cure or quit (if the breach is curable) if the client has done any of the following:

- Failed to pay the rent.
- Violated any provision of the lease or rental agreement.
- Materially damaged the rental property ("committed waste").
- Substantially interfered with other tenants ("committed a nuisance").
- Committed domestic violence or sexual assault against or stalked another tenant.
- Used the rental property for an unlawful purpose.
- Engaged in drug dealing, unlawfully used, cultivated, imported, or manufactured drugs.
- Using the building to conduct dogfighting or cockfighting.
- Unlawful conduct involving weapons or ammunition.
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Begin counting the three days on the first day after the day the notice was served. If the third day falls on a Saturday, Sunday, or holiday, the three-day period will not expire until the following Monday or non holiday. Cal. Civ. Proc. §§ 12,12a.

Note: Clients who negotiate lease agreements in other languages without the assistance of a translator must receive written translations of the agreement. The written translations must be provided by landlords prior to clients signing the agreement. Cal. Civ. C. § 1632(b)(3).

What options does the client have after receiving a 3-day notice?

If the notice allows the client to correct the problem, please encourage him to do so right away as the landlord can only evict if there is no correction. The tenancy will continue if the problem is corrected. Cal. Civ. Proc. § 1161(3).

If a client is threatened with eviction for **failure to pay rent**, the client should speak with his landlord right away. If the client is able to pay the rent, the owner is obligated to accept payment within the 3 days. Cal. Civ. Proc. §§ 1161; 1161.5. If not, the client should try to negotiate a payment plan. Should the landlord accept full or partial payment, the landlord may not proceed with the eviction. If past-due rent is paid *after* the notice expires, the landlord can choose to either file the eviction (unlawful detainer)

lawsuit or accept payment and waive the right to evict the client for failure to pay rent. See EDC Associates Ltd v. Gutierrez (1985; 153 Cal.App.3d 167).

The client must either **mail the payment or physically offer payment** to the landlord or manager; calling and offering to pay is insufficient. Rent can be mailed on the 3rd day of a 3-day notice, but if the client wants to personally deliver the rent, delivery must be accomplished by the 3rd day.

Advise the client to get **proof of payment** especially if he is paying with cash. A text from the landlord should suffice. The client should retain personal copies of receipts or checks showing any and all payments for rent.

If the problem is a **nuisance** that requires correction, advise the client to document the problem before and after any correction. The client should also retain all receipts/records for payments made to correct the problem.

If the problem is not correctable or if the client fails to correct it, the landlord can file an eviction lawsuit in Superior Court after the notice expires. The eviction lawsuit must be filed before the client can be evicted. This requires the landlord to follow certain steps. Cal. Civ. Proc. § 1166. Note that the landlord may not personally serve the client with the complaint and summons.

Did the client receive a 30-day or 60-day notice to terminate tenancy?

The landlord usually **is not required to state a reason for ending the tenancy** in the 30-day or 60-day notice. During the 30-day or 60-day period, the client should either move out or try to make arrangements with the landlord to stay.
If the landlord agrees that the client can continue to occupy the rental unit, it is important that the agreement with the landlord be in writing. If the landlord doesn't agree to an extension of the tenancy, the client will have to move out.

Was notice to terminate tenancy proper?

A proper notice identifies the client and property, and specifies the length of the notice. It is also signed and dated by the landlord. Cal. Civ. Proc. § 1161. A landlord's three-day, 30-day, or 60-day notice to a tenant must be "served" properly to be legally effective.

A landlord can serve a **three-day notice** on the tenant in one of three ways:

1. by personal service (Cal. Civ. Proc. § 1162(1)),
2. by substituted service (Cal. Civ. Proc. § 1162(2)), or
3. by posting and mailing (Cal. Civ. Proc. § 1162(3)). The landlord, the landlord's agent, or anyone over 18 can serve a notice on a tenant.

The landlord may use options 2 and 3 above (for a three-day notice) only if the tenant is absent from his residence or usual place of business at the time service is attempted.

A landlord can use any of the methods above to serve a **30-day or 60-day notice** on a tenant, or send the notice to the tenant by certified or registered mail with return receipt requested. Cal. Civ. Proc. § 1162.

After notice to terminate tenancy is given:

- **If notice was proper -** Prepare a letter to the new landlord requesting an opportunity to discuss continuation of tenancy, and/or consider moving to another complex.
- **If notice was <u>not</u> proper -** Prepare a letter to the new landlord regarding improper notice and asking him to rescind the improper notice in writing. This letter will likely only grant the client additional time.

What legal aid organizations will assist a client who receives a notice to terminate tenancy?

Bet Tzedek - (323) 939-0506

- 3250 Wilshire Boulevard, 13th Floor, Los Angeles, CA 90010.
- By appointment only! Please call first!
- Services: Foreclosure prevention

Neighborhood Legal Services of LA - (800) 433-6251

- 13327 Van Nuys Boulevard, Pacoima, CA 91331.
- Services: Bi-monthly foreclosure prevention clinics

B. Pending Eviction

Is there an eviction proceeding now pending?

REFER OUT

If an eviction is pending and the client has been served with the landlord's lawsuit, Cal. Civ. Proc. §1167.3, speak with the Executive Director immediately to refer the client to a private attorney or to refer the client to an appropriate legal aid organization. The client will need ongoing representation, and CLA-LA cannot assist the client given the sensitive and strict time deadlines.

Even though CLA-LA cannot take on eviction cases, there are some preliminary issues that can be discussed with the client.

Does the client seek assistance responding to the complaint?

To assist the client in preparing an answer, please review the client's lease agreement, the notice to terminate tenancy, and the complaint. Note, if the demand for unpaid rent exceeds $1,000, then the answer cannot be a general denial of all the landlord's claims.

An unlawful detainer defendant must respond to the complaint within five days after personal service or ten days after substituted service of the summons and complaint (Form UD-105). (Weekends count toward the 5 days, but holidays do not, and the fifth day must be a work day). Cal. Civ. Proc. §1167.

Does the client believe that the landlord is retaliating against him?

Retaliation may be raised as a defense only against an eviction for a nuisance. If the client is being evicted for unpaid rent, retaliation is not a viable defense. Cal. Civ. C. §1942.5.

Does the client wish to make a breach of habitability defense?

To have a valid habitability defense, the property must lack the requirements set out by Cal. Civ. C. §1941.1 (or other major health and safety violations). If there was a violation, the tenant must have given the landlord notice of the problem and a reasonable amount of time to correct it. Cal. Civ. C. §1942.

Even if the court finds that the client has a valid habitability claim, the tenant is still responsible for any remaining fees or unpaid rent. If rent is not paid within 5 days of the judgment then possession of the property will revert back to the landlord.

More information on habitability issues can be found in the G. Habitability section.

What legal aid organizations will assist with a pending eviction?

Bet Tzedek - (323) 939-0506
3250 Wilshire Boulevard 13th Floor, Los Angeles, CA 90010.
By appointment only. Please call first!

Inner City Law Center - (213) 891-2880
1309 E. 7th Street, Los Angeles, CA 90021.
Monday through Friday, 9:00am to 5:00pm

Weingart Hope Row Center, 501 E. 6th Street, Los Angeles, CA 90013 - (213) 833-5020
7:30am to noon, 1:30pm to 4:15pm, Monday through Friday, valid ID is required

Legal Aid Foundation of Los Angeles - (800) 399-4529
1102 Crenshaw Boulevard, Los Angeles, CA 90019.
Services: Self-help Legal Access Centers.

Eviction Assistance Center - (818) 485-0578
111 N. Hill Street, Stanley Mosk Courthouse, Room 115, Los Angeles, CA 90012.
Services: free legal help to low-income landlords and tenants in eviction cases

NLSLA (Neighborhood Legal Services of Los Angeles County) - (800) 433-6251
Various locations; typically serves outskirts of LA County.
Services: eviction defenses

What organizations assist on a sliding fee scale?

Eviction Defense Network - (213) 385-8112
1930 Wilshire Boulevard, Suite 208, Los Angeles, CA 90057.
First come, first served; no appointments for first-time clients.
Services: eviction defense on a sliding fee scale.

Los Angeles Center for Law and Justice - (323) 980-3500
1241 S. Soto Street, Suite 102, Los Angeles, CA 90023.
By appointment only! Please call first!
Services: eviction defense and workshops.

C. Removing Evictions From Record

Is the client seeking to remove an "eviction" from their record?

We often have clients who need help removing evictions from their records to **improve their credit history** and to help them **find new housing**. There may be little that can be done from a legal perspective, but we can give our clients advice that allows them to find the best available home for them.

Clients with a record of evictions should generally seek to rent from landlords who personally own and operate the property. Clients have a better chance to explain what happened and how they've changed since the eviction if they can talk to the landlord personally.

Can the client remove the eviction from their credit report?

First, review the relevant court documents to determine if a judgment was actually entered in the eviction proceeding. Sometimes, credit agencies report evictions that did not result in a judgment; those

can and must be removed.

If there was no final judgment, prepare a letter to the credit bureau asking that the eviction be removed and enclosing a copy of the court docket.

If there was a final judgment, prepare a letter to the landlord offering to settle the debt in exchange for a notarized letter (or Acknowledgement of Satisfaction of Judgment (Form SC-290) that can be filed in court) to confirm full payment. *The client should retain all receipts or checks showing payment of debt.* After payment of the debt, prepare a letter to the credit bureau asking that the eviction be removed and enclosing acknowledgement from landlord that the debt has been paid.

If the client does not have the judgment or court docket, check the court's website for the documents. If the documents are not online, advise the client to go to the courthouse in the judicial district where the case was handled to obtain a copy. If the case concluded more than 5 years ago, records may be in an archive center. *See, e.g., Archives and Record Center - 222 N. Hill Street, Los Angeles, CA 90012; (213) 974-1196.*

Can the client seal the court record?

Please note that it is a very difficult process to seal the eviction in court records. The client must file a motion or an application for an order to seal the records. The application must be accompanied by a memorandum a declaration of facts that justify the sealing. Cal. Rules of Ct. 2.551(b)(1); Cal. Rules of Ct. 2.550(d)(1)-(5).

D. Recovering Personal Property

After an eviction, clients often need to recover their personal property. *We can assist if this issue comes up, but there are time deadlines*! It is important to first find out when the client was evicted, where the property is located, and what the client has done to request the property.

A **demand letter** must be sent to the landlord within **18 days** of vacating the premises. This letter should request the tenant's personal property, include a **description** of the personal property held by the landlord, and specify the **mailing address** of the tenant. Cal. Civ. C. § 1965(a)(1).

Inform the client that he **may be liable for storage and moving costs** associated with the eviction and removing client's personal property. Cal. Civ. C. §§ 1965(a)(3), (b). If the client wants to proceed anyway, here are the steps we recommend:

- **Negotiate** first by preparing a letter to the landlord.
- **Mediate** if negotiation did not work. Help the client prepare a letter to the landlord requesting mediation.
- **Litigate** as a last resort; take the landlord to Small Claims Court.

See **9. Small Claims section** for more information.

E. Security Deposit

What does the law say about security deposits?

The landlord has **21 days from the vacate date** to send a full refund of security deposit or mail or personally deliver to the client an **itemized statement** that lists the amounts of any deductions from the client's security deposit and the reasons for the deductions, together with a refund of any amounts not deducted. Cal. Civ. C. § 1950.5(g)(1).

The landlord also must send the client copies of **receipts** for the charges that the landlord incurred to repair or clean the rental unit and that the landlord deducted from the security deposit, unless the repairs or cleaning cost less than $126 or if the client waived the right to receive them. Cal. Civ. C. § 1950.5(g)(3).

The landlord must send the itemized statement, copies of invoices or receipts, and any good faith estimate to the client **at the address that the client provides**. If the client does not provide an address, the landlord must send these documents to the address of the rental unit that the client moved from. Cal. Civ. C. § 1950.5(g)(6).

If the client feels the deductions were unreasonable and requests receipts or good faith estimates, the landlord has **14 days** to send the requested documents. Cal. Civ. C. § 1950.5(g)(5).

What should the client do if the client believe that the landlord has improperly withheld or made a deduction from the security deposit?

The client should tell the landlord or the landlord's agent why the deductions from the security deposit are improper and immediately ask the landlord or agent for a refund of the amount that the client believes he or she is entitled to get back.

The client can make this request by phone or e-mail, but should follow it up with a letter. **The letter should state the reasons that the deductions are improper, and the amount that should be returned.** The client should keep a copy of the letter.

It is a good idea for the client to send the letter to the landlord or agent by certified mail and to request a return receipt to prove that the landlord or agent received the letter. Alternatively, the client can deliver the letter personally and ask the landlord or agent to acknowledge receipt by signing and dating the copy of the letter.

Additional resources:

- "Security Deposit Self-Help", www.courts.ca.gov/1049.htm
- "Refunds of Security Deposits", www.dca.ca.gov/publications/landlordbook/sec-deposit.shtml

F. Rent Increase

Landlords may increase rent as long as the **amount** of the increase and the **notice** given comply with any applicable rent control ordinance or California law, whichever is more stringent, and the lease agreement.

First determine whether the client resides in a rent-controlled building, then, determine whether the amount of increase and the notice given were proper.

Has the landlord complied with rent increase laws?

Rent-Controlled Buildings
Rent control ordinances limit or prohibit rent increases and notices to vacate tenancy. Some California cities have local ordinances but each community's ordinance is different. For example, in the City of Los Angeles, rent increases are limited to a certain percentage each year. Also, some rent control ordinances only allow landlords to evict tenants for "just cause."

Rent Control Locations:
In California, the cities that have rent control are the City of Los Angeles, Beverly Hills, West Hollywood, Santa Monica, Berkeley, Campbell, East Palo Alto, Fremont, Hayward, Los Gatos, Oakland, Palm Springs, San Francisco, San Jose and Thousand Oaks.
(http://www.dca.ca.gov/publications/landlordbook/appendix2.shtml)

For the residents in the City of Los Angeles, though most clients know whether they reside in a rent-controlled building, some may not. For those who are unsure, advise them to find out by visiting http://hcidla.lacity.org/RSO-Overview or by calling the Los Angeles Housing + Community Investment Department (HCIDLA) at (866) 557-7368.

If the client has a lease in a **rent-controlled building** for **more than 30 days** (e.g. 1-year lease), their rent **cannot be increased during the term of the lease**, unless the lease allows rent increases.

If the client has a **periodic** rental agreement (month-to-month), their landlord can increase their rent, but the landlord must provide **proper advance notice** in writing. Cal. Civ. C. § 827 (b).

If the client resides in a rent controlled building in the City of Los Angeles, effective July 1, 2016, the annual allowable rent increase is 3%. This increase may be added to the rent and security deposit. The landlord can add an additional 1% per utility paid by the landlord (gas and/or electricity). See http://hcidla.lacity.org/RSO-Overview for other rent increases that require HCIDLA approval, such as capital improvement program, primary renovation program, seismic retrofit program, rehabilitation program and just and reasonable rent increase.

Non-Rent-Controlled Buildings
If the client does *not* reside in a rent controlled building, determine:
1. whether the **amount** of increase complies with the terms of the **lease agreement**, and
2. whether the **notice** of increase complies with **California law**.

- *30 days written notice* for rent increase of 10% or less of the current rent. Cal. Civ. C. § 827(b)(1)(B)(2).
- *60 days written notice* for rent increase of more than 10% of the current rent. Cal. Civ. C. § 827(b)(1)(B)(3).
- If the notice of rent increase was mailed instead of personally delivered, add an additional 5 days of notice. Cal. Civ. Proc. § 1013(a).

Calculating Permissible Rent Increases

In order to calculate the percentage of the rent increase, you need to know **the lowest rent that your landlord charged you during the preceding 12 months**, and **the total of the new increase and all other increases during that period**.

Example 1: Assume that your current rent is $500 per month due on the first of the month and that your landlord wants to increase your rent $50 to $550 beginning this June 1. To see how much notice your landlord must give you, count back 12 months to last June.

- **30 days' notice required:** Suppose that your rent was $500 last June 1. The amount of rent increase is $50 ($550-500), and is the same as 10% of the rent ($50). Your landlord therefore must give you at least 30 days' advance written notice of the rent increase
- **60 days' notice required:** Suppose that your rent was $475 last June 1, and that your landlord raised your rent $25 to $500 last November. The total amount of rent increase in the past year is $75 ($550-$475), which is more than 10% of the rent ($47.50). Your landlord therefore must give you at least 60 days' advance written notice of the rent increase.

Example 2: Now suppose that your rent was $500 last June 1, but your landlord wants to increase your rent $75 to $575 beginning this June 1. The amount of rent increase is $75 ($575-500), and is more than 10% of the rent ($50). Your landlord therefore must give you ***at least 60 days' advance written notice*** of the rent increase. (see http://www.dca.ca.gov/publications/landlordbook/living-in.shtml#rentincreases)

What options does the client have if the rent increase is improper?

If the **amount of increase** was improper (because it violates rent control laws), the client can file a complaint for review by a Housing Investigator. Go to the HCIDLA website to fill the tenant complaint intake form. If the client does not live in a rent control area, then the landlord can increase the rent as much as he/she wants to. But the landlord cannot increase the rent out of retaliatory purpose.

If **notice** was improper, prepare a letter to the landlord informing him of improper notice and asking that he rescind the improper notice in writing. At trial a "defective" notice can be used as an affirmative defense. *If the **amount** of increase is proper, the letter will only grant the client additional time.*
For more information, see the **HCIDLA Landlord Tenant Handbook** and the **HCIDLA website.**

What options does the client have if the rent increase is proper?

Even if notice was proper, the client may still be able to **negotiate with the landlord** regarding the rent increase. This is especially true if the client is a good tenant, has compelling reasons for objecting to the change, and is willing to pay some amount of increase.

Where notice is proper, the client should consider the following options:

- Prepare a letter to the landlord explaining the client's current financial situation and asking for grace.
- Consider moving to another complex.
- Pay the increased rent.

Is the landlord increasing the rent out of retaliatory purpose?

The landlord may not raise the tenant's rent or otherwise seek to punish the tenant for complaining or lawfully exercising a tenant right. Cal. Civ. C. § 1942.5.

The law **infers** (assumes) that the landlord has a retaliatory motive if the landlord seeks to take retaliatory action **within six months** after the tenant has exercised any of the following tenant rights:

- using the repair and deduct remedy, or telling the landlord that the tenant will use the repair and deduct remedy;
- complaining about the condition of the rental unit to the landlord, or to an appropriate public agency after giving the landlord notice;
- filing a lawsuit or beginning arbitration based on the condition of the rental unit; or
- causing an appropriate public agency to inspect the rental unit or to issue a citation to the landlord.

In order for the tenant to defend on the basis of retaliation, **the tenant must prove that**:

- he or she exercised one or more of these rights within the six-month period,
- the tenant's rent is current, and
- the tenant has not used the defense of retaliation more than once in the past 12 months.

If the tenant produces all of this evidence, then the landlord must produce evidence that he or she did not have a retaliatory motive. Even if the landlord proves that he or she has a valid reason, the tenant can prove retaliation by showing that the landlord's effort is not in good faith. If both sides produce the necessary evidence, the judge or jury then must decide whether the landlord's action was retaliatory or was based on a valid reason.

G. Habitability

Is there a legally recognized habitability obligation at issue?

In order to ensure that housing is safe and habitable, each state will have its own basic standards as to what landlords must provide or maintain for tenants. In California, landlords are required by law to provide certain, minimum amenities for their tenants. Cal. Civ. C. §§ 1941.1-1941.4.

A dwelling unit is considered to be **uninhabitable** (unlivable) if it **substantially lacks** any of the following:

- Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- Plumbing facilities in good working order, including hot and cold running water, connected to a sewage disposal system.
- Gas facilities in good working order.
- Heating facilities in good working order.
- An electric system, including lighting, wiring, and equipment, in good working order.
- Clean and sanitary buildings, grounds, and appurtenances free from debris, filth, rubbish, garbage, rodents and vermin.
- Adequate trash receptacles in good repair.
- Floors, stairways, and railings in good repair.

The unit is also considered uninhabitable if it contains lead hazards such as deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbed lead-based paint without containment.

Has the landlord failed to ensure habitability?

To determine whether a landlord has breached his obligation to the tenant, find out

1. the exact **nature** of the problem,
2. for **how long** it has been a problem, and
3. whether **notice** and an **opportunity to cure** was given to the landlord.

The **notice** should be in the form of a letter, and can be typed or handwritten. The letter should **describe the problem in detail** and the repairs that are required.

An **opportunity to cure** is generally understood to be a "**reasonable time**." For instance, **30 days** is presumed to be a "reasonable time" to wait (unless the problem creates an emergency situation in which health or safety are put at risk if not repaired immediately) for a client who subsequently pays to have the repairs made and deducts the cost from rent. Cal. Civ. C. § 1942(b).

How can the client raise the habitability issue with the landlord?

For a private landlord, prepare a letter to the landlord detailing the issue and requesting repairs. The tenant should sign and date the letter and keep a copy.

The letter should be sent to the landlord, manager, or agent by certified mail (return receipt requested). Alternatively, the tenant (or a friend) may personally deliver the notice to the landlord, manager, or agent. The tenant should ask for a signed and dated receipt showing that the notice was received, or ask the landlord to date and sign (or initial) the tenant's copy of the letter to show that the landlord received the notice.

If attempts to negotiate directly have failed--or if the client would prefer that a third party neutral facilitate the conversation--prepare a letter to the landlord requesting mediation.

For Section 8 Housing, advise the client to speak with his Section 8 Housing Worker; or call the Housing Authority for the City of Los Angeles [HACLA] to request an inspection. HACLA can be reached at:

- Section 8 Central (213) 252-1802
- Section 8 South (310) 225-4741
- Section 8 Valley (818) 756-1194

What legal remedies can the client pursue if the landlord fails to address the issue?

There are four primary remedies that the law provides for breaches of habitability:

1. Repair and deduct;
2. Abandonment;
3. Withholding rent; and
4. Litigation.

Each of these options is discussed in more detail below. You can also see Cal. Civ. C. § 1941.3(c) & Cal. Civ. C. § 1942.3 for a more comprehensive list of legal remedies.

Repair and Deduct

The "repair and deduct" remedy allows a tenant to deduct money from the rent, if those repairs would not cost more than one month's rent, to pay for repair of defects in the rental unit. Cal. Civ. C. § 1942.

There are ***very specific requirements*** for this remedy, including:

- (1) the defects must be serious and directly related to the tenant's health and safety.
- (2) the repairs cannot cost more than one month's rent.
- (3) the tenant cannot use the repair and deduct remedy more than twice in any 12-month period.
- (4) the tenant or the tenant's family, guests, or pets must not have caused the defects that require repair.
- (5) the tenant must inform the landlord, either orally or in writing, of the repairs that are needed.
- (6) the tenant must give the landlord a reasonable period of time to make the needed repairs (usually 30 days).
- (7) if the landlord doesn't make the repairs within a reasonable period of time, the tenant may either make the repairs or hire someone to do them. The tenant may then deduct the cost of the repairs from the rent when it is due. the tenant should keep all receipts for the repairs.

Risks of Repair & Deduct:

If the defects are not serious enough to justify using the repair and deduct remedy, or the client does not give the landlord proper advance notice or a reasonable time to make repairs, **the landlord can sue the tenant** to recover the money deducted from the rent or file an eviction based on the nonpayment of rent.

Abandonment

"Abandonment" means a tenant can abandon (move out of) a defective rental unit. A tenant might use this remedy where the defects would cost more than one month's rent to repair, but this is not a requirement of the remedy. The abandonment remedy has most of the same requirements and basic steps as the repair and deduct remedy. Cal. Civ. C. § 1942.

Risks of Abandonment:

If the existing defects do not affect the tenant's health and safety seriously enough to justify using the abandonment remedy, the landlord may sue the tenant to collect additional rent or damages.

Withholding Rent

A tenant is allowed to withhold (stop paying) some or all of the rent if the landlord does not fix serious defects that violate the implied warranty of habitability. In order for the tenant to withhold rent, the defects or repairs that are needed must be more serious than would justify use of the repair and deduct and abandonment remedies. The defects must be substantial—they must be serious ones that threaten the tenant's health or safety (see Green v. Superior Court, 10 Cal.3d 616 (1974)).

Examples of serious enough defects to justify withholding rent:

- Collapse and non-repair of the bathroom ceiling.
- Continued presence of rats, mice, and cockroaches.
- Lack of any heat in four of the apartment's rooms.
- Plumbing blockages.
- Exposed and faulty wiring.
- An illegally installed and dangerous stove.

Amount of rent that the client may withhold:

- ***Percentage reduction in rent:*** the percentage of the rental unit that is uninhabitable is determined, and the rent is reduced by that amount. For example, if one of a rental unit's four rooms is uninhabitable, the tenant could withhold 25 percent of the rent. The tenant would have to pay the remaining 75 percent of the rent. Most courts use this method.
- ***Reasonable value of rental unit:*** the value of the rental unit in its defective state is determined, and the tenant withholds that amount. The tenant would have to pay the difference between the rental unit's fair market value (usually the rent stated in the rental agreement or lease) and the rental unit's value in its defective state.

If the tenant withholds rent, the tenant should put the withheld rent money into a special bank account (called an escrow account). The tenant should notify the landlord in writing that the withheld rent money has been deposited in the escrow account and explain why.

Risks of Withholding Rent:

In most cases, defects are not be serious enough to threaten the tenant's health or safety. If the tenant wrongfully withholds rent, the landlord may **give the tenant an eviction notice** (a three-day notice to pay the rent or leave). If the tenant refuses to pay, the landlord will probably go to court to evict the tenant. In the court action, the tenant would have to **prove that the landlord violated the implied warranty of habitability**.

Litigation
The client may be able to file a lawsuit against the landlord to recover money damages if the landlord does not repair serious defects in the rental unit in a timely manner. Take the landlord to Small Claims Court if the claim does not exceed the jurisdictional limit of that court (which is currently $10,000 or less). Cal. Civ. C. § 1942.4(e).

See Cal. Civ. C. § 1942.4(a) for the requirements for the tenant to win the lawsuit against the landlord. See also page 46 of the California Tenants Guide (http://www.dca.ca.gov/publications/landlordbook/catenant.pdf).

Litigating End of Tenancy:

Be aware that the **cost of litigating** an eviction or a termination of tenancy proceeding **is likely to exceed the cost of the client's rent.** If the court finds there was no breach of the warranty of habitability, the client may be required to pay attorney's fees and the costs of the suit for the prevailing party. Cal. Civ. C. §1942.4(b)(2).

If the client understands the risks and chooses to litigate these issues, please speak with the Executive Director to refer the client to a private attorney or refer the client to an appropriate legal aid organization. **The client needs ongoing representation**, and CLA-LA does not have the resources to provide such representation.

How can the client report habitability or housing code issues to the government?

The client can contact either of the following:
- Los Angeles County Department of Public Health (888) 700-9995; OR
- The Systematic Code Outreach Program, LA Housing + Community Investment Department (866) 557-7368.

Note: Landlords cannot act against tenants within 180 days of tenants exercising their rights, including reporting violations to the government. Cal. Civ. C. § 1942.5. Such action will be presumed to be retaliation.

What legal aid organizations will assist with a breach of warranty of habitability?

a) Bet Tzedek - (323) 939-0506
3250 Wilshire Boulevard 13th Floor, Los Angeles, CA 90010.
By appointment only! Please call first!
Services: Housing Conditions/Tenant's Rights

b) Inner City Law Center - (213) 891-2880
1309 E. 7th Street, Los Angeles, CA 90021.
Services: Healthy Homes Project, Housing litigation

c) Legal Aid Foundation of Los Angeles - (800) 399-4529
1102 Crenshaw Boulevard, Los Angeles, CA 90019.
Services: Housing litigation

H. Foreclosure

After a foreclosure sale, our clients might receive a notice to terminate tenancy from their new landlords. If notice is proper, our clients will have to quickly negotiate with the new landlord in order to have a chance of retaining their housing.

What are the tenant's rights in a foreclosure?

If a tenant is residing in a **Los Angeles City rent-controlled unit**, or an apartment with **"just cause" eviction protections**, the tenant cannot be forced to leave just because the landlord sold the building, or lost it in foreclosure. The tenant, however, must continue to pay his or her rent on time. If the new owner refuses to accept the rent, then the tenant should open an escrow account and place his or her rent into that account and write the new landlord a letter advising that an escrow account has been opened to hold the rent until requested.

Under the City of Los Angeles Rent Stabilization Ordinance (RSO), tenants evicted for **"no fault" reasons**(which includes a foreclosure) **in the City of Los Angeles** are entitled to **relocation assistance**. See http://hcidla.lacity.org/Relocation-Assistance for details.

If there are tenants in the house that was foreclosed on, the new owner must honor the existing lease. A tenant under a **fixed term lease** that is in good standing (has paid all of their rent on time) cannot be evicted by a lending institution until the end of the fixed lease term.

However, if the tenants have a **periodic** (e.g. month-to-month) lease or the **owner/landlord also lives in the home** that is being foreclosed on, the new owner can evict the tenants or former owner/landlord. In these cases, the new owner may *either* (1) offer the existing tenants a new lease or rental agreement or (2) begin eviction proceedings.

If the new owner chooses to evict existing periodic tenants in good standing (other than the former owner), the new owner must give the tenants at least **90 days' notice** before starting eviction proceedings.

If a tenant is not named in the complaint for the eviction, he or she may be able to challenge the eviction at any time during the case or even after the judgment for eviction is made. Cal. Civ. Proc. § 1161b.

Additional Resources:

- "Rights of Tenants During a Foreclosure" - www.courts.ca.gov/1048.htm
- Tenant Foreclosure Hotline - (888) 495-8020

How can the client find information about the new owner/landlord?

If the client is a tenant in a property that was sold in a foreclosure sale, he should ask the "new" landlord for a **Trustee's Deed** as proof of ownership prior to paying rent to that individual. This will help the client avoid rent problems and becoming a victim of fraud.

If the new landlord is unknown, the client should go to the **County Recorder's Office** to find out who owns the property. In Los Angeles County, the client can find out the owner's name by obtaining the Assessor's Identification Number on the Tax Assessor Website.

1. Visit maps.assessor.lacounty.gov/mapping/viewer.asp and enter the property's street address, following the instructions carefully.
2. Once the client has the Assessor's Identification Number, he can call the Los Angeles County Tax Assessor's office at (213) 974-3211 or (888) 807-2111 and obtain the owner's name by following these instructions:
    - Press "2" for the automated system;
    - Press "1" for English;
    - Press "1" for property tax information;
    - Press "4" for current owner.
    - Enter the Assessor's Identification Number and press "1" to confirm the number when prompted.
        - *The property owner's name will be s-p-e-l-l-e-d o-u-t, so listen carefully!*
    - If the client would like the owner's address, he should stay on the line and press "9" when prompted to speak with a clerk during normal business hours.

Has the client received a notice to terminate tenancy based on foreclosure?

If the client lives in the **City of Los Angeles**, he/she **may not be evicted based on foreclosure**. More information is available from the Department of Consumer and Business Affairs.

If the client does not live in the City of Los Angeles, please find out whether the client has a copy of his lease agreement. In general, if the client has a fixed-term lease agreement, he is entitled to occupy the property until the end of the lease term. Periodic tenants in good standing (other than the former owner) must be given at least **90 days' notice**. Cal. Civ. Proc. § 1161b.

I. Special Circumstances

Is the client having trouble finding housing because of a criminal record?
Is the client a victim of domestic violence?
Is the client a lodger (one renting a room in an owner occupied home)?
Is there a dispute between the client and a roommate regarding payment of rent?

Is the client having trouble finding housing because of a criminal record?

Housing options for clients with criminal records are unfortunately limited. Neither private more public housing authorities are prohibited from taking criminal convictions into account. However there are some options available to clients in this situation.

Public Housing
Federal Law gives Public Housing Authorities ("PHA") the power to deny admission to federally assisted housing based on criminal activity. Federally assisted housing refers to public housing, the voucher program, project-based Section 8, and Section 8 Moderate Rehab.

- There is a **permanent ban** on admission for (1) sex offense convictions which are subject to the State lifetime sex offender registration requirement (42 U.S.C. § 13663), and (2) convictions of manufacturing or producing methamphetamine on the premises of federally assisted housing (42 U.S.C. § 1437(f)).
- There is a **three year ban** on admission if evicted from federally assisted housing for drug related activity unless a drug rehabilitation program approved by the PHA is completed (42 U.S.C. § 13661(a)).
- PHA and private owners have discretion over admitting individuals who, within a reasonable period before admission, engaged in drug-related criminal activity, violent criminal activity, or criminal activity that would "threaten the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees." (42 U.S.C. § 13661(c)).

In the City of Los Angeles, public housing programs are administered by the Housing Authority of the City of Los Angeles ("HACLA").

A background check is conducted as part of the HACLA Section 8 voucher application process that will reveal any criminal convictions, and violent or drug related charges are particularly considered. The Housing Authority will consider whether the client's current and past actions interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

If the client has a criminal conviction, he or she should be up front about it and try to get documentation that demonstrates a commitment to a stable, lawful, and productive lifestyle. The Public Housing Authority will look at mitigating factors that put criminal history into context and look for evidence (such as an official rap sheet) that no member of your household has committed any new criminal activity in recent years.

A Section 8 voucher may be revoked if the client takes part in drug-related criminal activity or violent criminal activity.

Private Housing
Private landlords are permitted to consider a housing application's criminal record. In the application process for housing, it is common for landlords to run a consumer report which reveals an applicant's credit characteristics, rental history, or criminal history. Cal. Civ. Code § 1785.13(a)(6) prohibits any *consumer report* by a credit reporting agency from including arrests, indictments or misdemeanors that did not result in a conviction, or crimes that are more than seven years old. Consent is needed for

such reports and is typically obtained through the rental application. Landlords also have the discretion to run an additional background check on consenting applicants through a tenant screening company, which may reveal an applicant's entire criminal history.

If the client is denied housing because of criminal activity revealed by a background check, the client has a right to ask for a reason for the denial beyond the fact that they have a criminal record, as there are limitations on what factors landlords may lawfully consider.

- Landlords may not discriminate based on drug addiction, as it is considered a disability under the Fair Housing Act. However, they may deny applicants based on ongoing illegal drug use.(https://www.hud.gov/offices/fheo/library/huddojstatement.pdf)
- If the client is denied housing based on an arrest record, this is a violation of fair housing laws. The Department of housing and Urban Development ("HUD") released guidelines in 2016 stating that "[a] housing provider with a policy or practice of excluding individuals because of one or more prior arrests (without any conviction) cannot satisfy its burden of showing that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest." Additionally, "[b]ecause arrest records do not constitute proof of past unlawful conduct and are often incomplete (e.g., by failing to indicate whether the individual was prosecuted, convicted, or acquitted), the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual." (https://portal.hud.gov/hudportal/documents/huddoc?id=hud_ogcguidappfhastandcr.pdf)
- In the same 2016 guidelines, HUD also stated that a blanket policy of refusing to rent to any person with a criminal background violates the Fair Housing Act. The landlord has to prove, based on more than just generalization or stereotype, that the decision or policy legitimately serves to protect safety or property. A landlord must be able to show its "tailored" use of criminal background checks "accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not."

Anyone who believes she or he has experienced discrimination in housing may file a complaint by contacting HUD's Office of Fair Housing and Equal Opportunity at (800) 669-9777.

Housing Options

If a client with a criminal record is homeless and is unable to obtain public or private housing, he or she may be able to find temporary housing at a mission, shelters, or transitional living village. Additionally, parole officers may be able to assist in finding housing.

- Homeless veterans: http://weingart.org/index.php?option=com_content&view=article&id=194
- Homeless with minor children: http://upwardboundhouse.org.s20114.gridserver.com
- Formerly incarcerated: http://thefranciscohomes.org/resource-guide/
- Homeless: http://www.epath.org/site/PATHServices/home.html

Is the client a victim of domestic violence?

Domestic violence is a leading cause of homelessness for women and children in the United States and a lack of affordable housing options is regularly reported by survivors as a primary barrier to escaping abuse.

Federal Protections

The Violence Against Women Act ("VAWA"), protects both male and female victims of domestic violence from being denied housing or evicted solely on the basis that they are victims of domestic violence, dating violence, sexual assault, or stalking, if they otherwise qualify for admission, assistant, participation, or occupancy (42 U.S.C. § 14043e-11). VAWA applies to federally assisted housing programs administered by HUD, such as public housing, Section 8 vouchers, and project based Section 8. For more information on VAWA, see http://nhlp.org/files/VAWA-2013-Bulletin-Article-Jan-2014-updated_1.pdf.

Despite VAWA's protections, a housing provider may still be able to evict the victim if the housing provider demonstrates the existence of an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted or assistance is not terminated. VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence.

If a family has a Section 8 tenant-based voucher and family break-up occurs due to violence, dating violence, or stalking, the public housing authority must ensure that the victim retains the Section 8 voucher assistance.

If the abuser was the only household member receiving housing assistance, VAWA states that the victim must be afforded the opportunity to demonstrate eligibility for the housing program. If the victim cannot establish eligibility for that program, then the housing provider must allow the victim reasonable time to show that he or she qualifies for another covered housing program, or to relocate to other housing.

State Protections

In California, there are additional statutory protections for victims of domestic violence from discrimination in private housing.

Cal. Civ. Proc. Code § 1161.3 **prohibits a landlord from evicting a tenant (or refusing to renew a tenant's lease) based on acts of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse committed against the tenant, or a member of the tenant's household.** The law is designed to prevent victims from being evicted for abuse that has been reported, either through a restraining order or police report no more than 180 days old.

- A victim who provides the required information may still be evicted (or fail to obtain a lease renewal) if he or she has already used this law for protection, AND either: (1) the victim allows the person named in the restraining order or police report to visit the property; OR (2) the landlord reasonably believes the abuser is a physical threat to other tenants or people on the property, or to other tenants' use of the property ("right to quiet possession"). Before evicting the victim, however, the landlord must provide notice to the victim and give him or her three days to address the problem. http://nhlp.org/files/02%20Eviction%20Defense%20Q&A%20for%20Advocates.pdf.

Cal. Civ. Proc. Code § 1946.7 **allows a tenant to terminate his or her lease early, leave the unit, and no longer be required to pay rent.** The law applies to both private and subsidized housing. The tenant will be responsible for rent for up to 30 days after notifying the landlord about moving out, and thereafter will be released from any rent payment obligation under the rental agreement without penalty.

- To use this law, the tenant must provide written notification to the landlord that the tenant (or a family member of the tenant's household) has been a victim of domestic violence, sexual assault, human trafficking, stalking, or elder/dependent adult abuse, and that he or she wants to end the rental agreement.
- The National Housing Law Project has published a lease termination toolkit for survivors in both Spanish and English, which can be found at: http://nhlp.org/files/Early-Lease-Termination-Toolkit-Combined-Advocates-and-.Survivors.pdf.

Housing Resources

- National Domestic Violence Hotline: (800) 799-SAFE (7233)
- Information regarding LA Domestic Violence Shelters & 24-Hour Hotlines: http://hcidla.lacity.org/domestic-violence-shelters
- Central LA: Transitional residence for single women and women with children in the process of moving from emergency shelter to permanent housing: http://www.alexandriahouse.org/aboutus.html
- East LA/San Bernardino: House of Ruth offers free programs for battered women, men, and their children: http://houseofruthinc.org/services-we-offer/
- North LA/The Valley: Haven Hills provides safety, shelter, and support to all victims of domestic violence: https://www.havenhills.org/services/
- Transitional Housing for Asian and Pacific Islander domestic violence survivors: http://www.transitionalhousing.org/li/asian_pacific_womens_center_inc._90017

Is the client a lodger (one renting a room in an owner occupied home)?

If no reason is stated for the termination of tenancy, a lodger is only entitled to notice that is as long as the tenancy itself (ex. month-to-month tenancy requires 30-day notice). If a lodger fails to move out, the owner can call the police to remove the lodger without filing an eviction notice. Cal. Civ. Code § 1946.5. Note, if two or more parties are renting rooms then all parties are considered tenants.

Is there a dispute between the client and a roommate regarding payment of rent?

Where the client and a roommate are named in the lease agreement, each can be held responsible for the full rent amount. Even where one has moved out, so long as the lease term still applies, the landlord is allowed to sue both or either roommate for all of the unpaid rent. Cal. Civ. Code § 1812.643.

II. Owners

When clients who own their homes come to CLA-LA, it is most often because they are struggling to make their mortgage payments and are facing foreclosure. Because CLA-LA is unable to provide on-going representation, we are limited in what we can do for clients who are facing foreclosure.

Sometimes the most important advice we can give clients is to tell them when they may not have a claim or recourse. It is better to be honest with them up front, than to mislead them into thinking that they may have some recourse when they do not.

A. Foreclosure

Is the client an owner facing foreclosure?

Foreclosure is a complicated process in which the courts, the lenders, and the owners determine how to best settle an outstanding debt on property. While CLA-LA is able to educate clients who are experiencing financial difficulty about the foreclosure process, we are not able to provide on-going assistance. In certain cases, however, CLA-LA may be able to help prepare a client who owns property to negotiate with his lender.

Has the client already attempted to negotiate with the lender?

If the client is being threatened with foreclosure, the best advice would be for him to **negotiate a payment plan** with his lender.

If the client has already attempted to negotiate, or is currently in the negotiating process, there is little more that CLA-LA can do. We can educate the client to better prepare him for the negotiation and provide some emotional and spiritual support, but we are not able to assist with the negotiation process on an on-going basis.

Has the client received a notice of default?

The lender MUST contact the client on the mortgage loan to assess the client's financial situation and explore options to avoid foreclosure (called a "**foreclosure avoidance assessment**").

If the client and the lender have not worked out a plan to avoid foreclosure, the lender can **record** a Notice of Default in the county where the client's home is located, **at least 30 days** after contacting the client for the foreclosure avoidance assessment. This marks the beginning of the formal and public foreclosure process.

The lender sends the client a copy of this notice by certified mail within 10 business days of recording it. The client then has **90 days** from the date that the Notice of Default is recorded to "cure" (fix, usually by paying what is owed) the default.

For more information, see Cal. Civ. C. §§ 2923.5(a)-2923.5(b) and (e); 12 U.S.C. § 1461 et seq.; Rodriquez v. JP Morgan Chase, 809 F. Supp.2d 1291 (S.D. California 2011).

REFER OUT

If the client has received a notice of default, please speak with the Executive Director about referring the client to a private attorney or an appropriate legal-aid organization. CLA-LA does not have the resources at this time to provide on-going assistance for this issue at this time.

Has the client received a notice of sale?

If the client does not pay what he/she owes, a Notice of Sale is recorded (**at least 90 days after the Notice of Default is recorded**). The Notice of Sale states that the trustee will sell the home at auction in 21 days.

The Notice of Sale must:

- Be sent to the client by certified mail.
- Be published weekly in a newspaper of general circulation in the county where the client's home is located for 3 consecutive weeks before the sale date.
- Be posted on the client's property, as well as in a public place, usually at the client's local courthouse.
- Have the date, time, and location of the foreclosure sale; the property address; the trustee's name, address, and phone number; and a statement that the property will be sold at a public auction.

The client has up until **5 days before the foreclosure sale** to cure the default and stop the process. This is called "reinstatement" of the loan.

For more information, see Cal. Civ. C. § 2924f(b)(1).

REFER OUT

If the client has received a notice of sale, please speak with the Executive Director about referring the client to a private attorney or an appropriate legal-aid organization. CLA-LA does not have the resources at this time to provide on-going assistance for this issue at this time.

Would filing for bankruptcy delay the foreclosure?

Filing for bankruptcy may delay the sale of the client's home. It is, however, a complex process with long-term financial consequences. Please see the Debt and Bankruptcy chapter for more information.

Please determine **whether the client has previously filed for bankruptcy**. If the client has, determine when and how many times he has filed as it may impact whether bankruptcy will delay the foreclosure process.

Generally when a client files for bankruptcy, it triggers an **automatic stay** on his foreclosure proceedings. 11 USC § 362(a)(3). There are **2 exceptions** to the automatic stay:

- If the client **filed for bankruptcy and it was dismissed within the preceding 1-year period**, the automatic stay is only for 30 days. 11 USC § 362(c)(3)(A).
- If the client **filed for bankruptcy and it was dismissed twice within the previous year**, there is no automatic stay. 11 USC § 362(c)(4)(A)(i).

If one of the above cases filed by the client was first filed under Chapter 7 and had to be re-filed under Chapter 11 or Chapter 13, then that case does not apply in the two above-cited exceptions. 11 USC § 362(c)(3)(A). Note that the exceptions do not apply if it has been more than a year since bankruptcy proceedings were dismissed or closed.

An automatic stay can be requested if the client can prove by clear and convincing evidence that the prior bankruptcy filings were in good faith. 11 USC §§ 362(c)(3)(B)&(C) and (c)(4)(B).

What legal aid organizations will assist a client who is threatened with foreclosure?

Bet Tzedek - (323) 939-0506
3250 Wilshire Boulevard 13th Floor, Los Angeles, CA 90010.
By appointment only! Please call first!
Services: Foreclosure prevention

Neighborhood Legal Services of LA - (800) 433-6251
13327 Van Nuys Boulevard, Pacoima, CA 91331.
Services: Bi-monthly foreclosure prevention clinics

B. Evictions

CLA-LA seeks to encourage its clients to find "win-win" resolutions that will benefit themselves and their tenants. As such, clients should be advised to **communicate and mediate** before evicting a tenant; evictions should be a last resort resolution.

How does the client begin the eviction process?

The foundation of any eviction proceeding is the **written notice to terminate tenancy**. The client, the landlord, must give the tenant proper notice to initiate the eviction process. Cal. Civ. Proc. § 1161. The landlord may personally serve the tenant with notice, but should be cognizant of the fact that the notice cannot be amended after service.

Did the client properly serve the tenant with notice?

While CLA-LA is able to educate clients who seek to evict a tenant, we are not able to provide on-going assistance. We can, however, educate the client about what constitutes improper notice.
See www.courts.ca.gov/27723.htm.

a) Payment Amount Requested
A notice to terminate tenancy for unpaid rent must only request late rent; the inclusion of late fees would likely invalidate the notice. Note that the client may concurrently serve the tenant with a second notice requesting late fees or other non-rent fees.

b) Timing
Notice to terminate tenancy for unpaid rent cannot be served until the rent is actually late. For example, if the rent is due on the 1st but the lease includes a grace period, then notice may only be served after the grace period has ended. Additionally, if the tenant has consistently been late with the rent payment, the client must give the tenant a 30 day notice regarding the payment date before he can begin enforcing the actual due date.

c) Scope
Notice to terminate tenancy may not request rent going back beyond a year prior to the notice. Cal. Civ. Proc. § 1161(2).

d) Inadequate Information
- *Notice to terminate tenancy for unpaid rent* must include the amount due along with the name, phone number, and address of the person to whom rent should be paid. If rent is to be paid in person it must include the person's availability. Cal. Civ. Proc. § 1161(2).
- *Notice to terminate tenancy for a nuisance* (a notice to "cure or quit") must include a list of witnesses and provide the tenant with an opportunity to cure the breach.

e) Successive Notices
Once the client serves a 30-day notice to quit, no new rent can accrue or be requested after the 30 days, so if the landlord subsequently served the tenant with 3-day notice to pay or quit, that subsequent 3-day notice cannot request payment for rent accrued after the initial 30-day notice.

f) Rent Control
If the property is under rent control, the client is required to give the tenant a reason for the notice to terminate tenancy. There are only 12 adequate reasons to terminate tenancy, including nonpayment of rent, breaking a term in the lease, or causing a nuisance. L.A. Mun. C. §151.09. If the property is not under rent control then the client is not obligated to provide a reason for the eviction.

Did the tenant comply with the notice?

If the tenant delivered **all of the late rent** that was due **within the notice period**, the client (landlord) is **obligated to accept the payment** and waive his right to continue the eviction process. Further, the client (landlord) waives the right to continue the eviction process if the client accepts a lesser payment or payment after the notice period has expired.

Does the client wish to proceed with the eviction process because the tenant failed to comply with the notice?

CLA-LA does not have the resources at this time to provide ongoing assistance to those who must file and serve a summons and complaint. Rather, CLA-LA can educate the client about his next steps. If necessary, please refer the client to another resource.

What are the client's next steps after a 3-day notice?

The landlord must first file a summons and complaint with the superior court and then serve the tenant with these documents. Note that the landlord may not personally serve the tenant. The landlord must hire a process server, ask a sheriff, or have someone over 18 who is not involved with the case to serve the tenant. See Cal. Civ. Proc. §§ 412.20 and **Service of Process Client Instructions**.

What happens after a complaint is filed and served?

The tenant generally has **5 days to respond** with an answer. Cal. Civ. Proc. § 1167.3. Should the tenant fail to respond the landlord may file for a default judgment. If the tenant responds with an answer the landlord should proceed to **request a trial date** be set. California state law requires that there be a trial **within 20 days**. Cal. Civ. Proc. § 1170.5(a).

III. Low-Income Housing Programs

There are two primary low-income housing programs in Los Angeles: **Public Housing** and **Section 8.**

Public Housing
The Housing Authority of the City of Los Angeles (HACLA) manages 14 large public housing locations throughout Los Angeles. The Public Housing Program provides affordable housing to more than 6,500 families with very low income in Los Angeles. A resident's rent in the public housing program is subsidized by the federal government. Applicants to the public housing program must be income eligible and residents must adhere to program rules. A resident's rent in the public housing program is usually calculated at 30% of the household's adjusted monthly income.

See more information about public housing at http://www.hacla.org/aboutpublichousing.

Section 8 Program
The Section 8 Program offers tenant-based assistance. Participants find their own housing to rent in the open market, and pay a portion of their income towards rent. The Housing Authority subsidizes the balance of the monthly rent in direct payments to the owner. The Housing Authority administers Section 8 in the jurisdiction of Los Angeles County only, though eligible participants may transfer their rental assistance to other parts of the country.

See more information about Section 8 at http://www.hacola.org/section-8.

The following legal aid organizations will also assist a client seeking housing:

- **Inner City Law Center - (213) 891-2880**
  - 1309 E. 7th Street, Los Angeles, CA 90021.
  - Services: Homeless Veterans Program, LA City Homeless Prevention Project
- **Legal Aid Foundation of Los Angeles - (800) 399-4529**
  - 1102 Crenshaw Boulevard, Los Angeles, CA 90019.
  - Services: Section 8 education, LA City Homeless Prevention Project
- **Neighborhood Legal Services of LA - (800) 433-6251**
  - 13327 Van Nuys Boulevard, Pacoima, CA 91331.
  - Services: Section 8 education, LA City Homeless Prevention Project

A. Tenancy Issues in Low-Income Housing

For general information about tenancy issues, see the Tenants and G. Habitability sections.

Is the client in public housing?

Prepare a letter to housing management requesting resolution of the problem. Alternatively, or if management does not respond, contact HACLA Public Housing Resident Services at (213) 252-6100.

Is the client in Section 8 housing?

Prepare a letter to the landlord requesting resolution of the problem. Alternatively, or if the landlord does not respond, contact HACLA to request a property inspection:

- Section 8 Central - (213) 252-1802
- Section 8 South - (310) 2225-4741
- Section 8 Valley - (818) 756-1194

Is the client in housing run by a nonprofit organization?

If the client is inquiring about his rights as a tenant in low-income housing or a shelter operated by a non-profit organization, please speak with the Executive Director to refer the client to a private attorney or refer the client to another legal aid organization, as we may not be able to assist in these circumstances.

Is the client at risk of eviction from public or Section 8 housing?

Review the client's lease agreement and the relevant public housing website to determine what, if anything, can be done to retain housing. **Once a client is evicted from public or government housing, he may not be accepted back into the program!** Thus, it is important to quickly address the threat.

B. Public Housing

Many of CLA-LA's clients in public housing are residents of the City of Los Angeles and thus, would fall under the purview of the Housing Authority of the City of LA (HACLA). The mission of HACLA is to "[preserve the] existing affordable housing supply of 75,000 units while ensuring these units are both safe and decent…"

The Public Housing Program provides affordable housing to more than 6,500 families with very low income in Los Angeles. A resident's rent in the public housing program is subsidized by the federal government. Applicants to the public housing program must be income eligible and residents must adhere to program rules. A resident's rent in the public housing program is usually calculated at 30% of the household's adjusted monthly income.

Educate the client about the public housing application process and explain that there is no guarantee he will obtain housing immediately. There is often a wait list and the city's wait list may be closed.

Public Housing Application: http://www.hacla.org/applyforph

Public Housing Authority Contact Information: www.hud.gov/offices/pih/pha/contacts/states/ca.cfm

C. Section 8

The Housing Authority of LA County offers "Section 8" rental assistance to families that meet the eligibility requirements. Participants **find their own housing** to rent in the open market, and **pay a portion of their income towards rent**. The Housing Authority subsidizes the balance of the monthly rent in direct payments to the owner/landlord.

The Housing Authority administers Section 8 in the jurisdiction of Los Angeles County only, though eligible participants may transfer their rental assistance to other parts of the country.

To be eligible for rental assistance, a household must 1) qualify as a family, 2) meet eligible immigrant or citizenship requirements, 3) be within the income limits, and 4) provide additional eligibility information if requested.

1) Qualify as a Family:

- *An elderly family*. A family whose head, co-head, spouse, or sole member is a person who is at least 62 years old.
- *A disabled family*. A family whose head, co-head, spouse, or sole member is a person with disabilities.
- *A group of persons*. Two or more persons sharing residency, whose income and resources are available to meet family needs, and who are related by blood, marriage, or operation of law.
- *A single person.* A person who lives alone, or intends to live alone.

- **2) Meet Eligible Immigrant or Citizenship Requirements:** To receive assistance, applicants must provide evidence of citizenship or eligible immigration status. Each family member must declare their status once. The Housing Authority will verify citizenship information with other eligibility

factors.

3) Be Within the Income Limits: To be eligible for the program, a family's gross annual income must be below 50% of the Area Median Income (AMI) in Los Angeles County. 75% of new admissions must have gross annual incomes at or below 30% of the AMI. HUD determines the AMI yearly.

4) Provide Additional Eligibility Information If Requested: The Housing Authority may required additional verification forms and documents, including criminal background check and credit check. See more details at http://www.hacola.org/section-8/for-section-8-applicants/am-i-eligible.

Section 8 Application

You may refer the client to the Section 8 Housing Application, available at http://www.hacola.org/section-8/how-to-apply. *Please note that Section 8 Waitlist may be closed due to demand and supply.*

D. Veteran's Housing

Refer clients to the **National Veterans Resource Directory** website for available programs. https://www.ebenefits.va.gov/ebenefits/nrd/nrd-results#/search?searchtype=keyword&keyword=housing&location=ca&radius=&territory=&topic=

Refer clients to the **Los Angeles Homeless Services Authority** website for available programs. https://www.lahsa.org/veteran-resources

Refer clients to **Veterans Affairs Supportive Housing Program (VASH)** http://www.hacola.org/section-8/veterans-affairs-supportive-housing-(vash)

For VASH eligibility determination:

- Contact the Greater Los Angeles VAMC: (310) 478-3711
- Walk in and be screened at the VAMC's Screening Clinic located on the West Los Angeles Veterans Administration campus:
    - 11301 Wilshire Blvd., Building 257 Los Angeles, CA 90073
    - Walk in Hours: 8 a.m. -3:30 p.m.; first come, first served

E. Shelters

For immediate housing:

- Refer clients to shelters listed on the "**Shelter Listings**" website for available housing. www.shelterlistings.org/state/california.html
- Refer clients to **PATH Services.** PATHWays Housing programs provides temporary places for homeless adults and families to live. http://www.epath.org/site/PATHServices/pathways-housing.html

- Refer clients to **Los Angeles Homeless Services Authority (LAHSA)** at (213)683-3333 or the **Homeless Services Unit** at (213)808-9012. https://www.lahsa.org/get-help

If the client is inquiring about his rights as a tenant in low-income housing or a shelter operated by a non-profit organization, please speak with the Executive Director to refer the client to a private attorney or refer the client to another legal aid organization, as we may not be able to assist in these circumstances.

2. FAMILY LAW

CONTENTS

Family law disputes are among the most common legal issues our clients face. In almost all cases, our clients have no funds to retain legal counsel and have never had anyone spend time trying to help them see win-win solutions to very sensitive emotional issues. Our goal is to help find solutions that provide for children's interests and alleviate parents' concerns.

Listen. CLA-LA seeks to equip our volunteers to love our clients by listening. Listening is important because it will help you to understand the goals and needs of your client. Their personal history, priorities, and economic ability may be entirely different than your own or what you would expect.

Pray. We also recommend praying to center your mind and help the client identify win-win solutions.

Encourage. We often find it necessary to encourage clients to receive grace and offer mercy in the midst of facing the broken family relationship.

Teach. There are two primary issues we face at our legal clinics: (1) addressing custody disputes, and (2) determining child support. As to custody disputes, courts attempt to determine what arrangement is in

the best interests of the child. As to child support, the courts apply a mathematical formula that leaves them with little discretion. We seek ways to help our clients understand these basic legal principles.

FAMILY OR PROBATE COURT?

Please note that **family law courts** only have jurisdiction over matters involving **disputes between parents**. If the child has been taken by the state, that is a **dependency action**, and the family law courts will not take any orders until the child has returned to the custody of the parents usually by way of an "Exit Order." If the child is in the custody of a non-parent individual, it is a **guardianship action**, which must be litigated in **probate court**.

I. Child Custody, Visitation, and Support Orders

CLA-LA regularly sees clients in need of help with modifying or enforcing existing court orders governing the custody of minor children or child support. **We recommend volunteers listen to the client's story and review the existing court order before providing advice on how to proceed**.

When assisting a client with a child custody or child support modification, it is helpful to understand the legal standards that apply:

Child custody standard = best interest of the child. "*Legal custody*" refers to the right to make important decisions regarding the child's religion, education, medical, etc. "Physical custody" refers to the parent with whom the child lives. See, e.g., https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3083.&lawCode=FAM In making a determination of the best interest of the child, the court will, among any other relevant factors, consider all of the following (Cal. Fam. C. §3011):

- The health, safety, and welfare of the child
- Any history of abuse by one parent or any other person seeking custody against any of the following:
  - Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary

  - The other parent
  - A parent, current spouse, or cohabitant of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship
- The nature and amount of contact with both parents
- Any controlled substance abuse by either parent

There is a rebuttable presumption under Family Code § 3044 that **a person found to have committed domestic abuse will not have sole or joint custody** (including both legal and physical custody) of their children. If you are working with someone who has been found to have committed domestic violence (this could be from a criminal conviction, a domestic violence restraining order, or a finding by the court during a custody hearing**), review the factors in § 3044b** with them to determine whether they might be able to **rebut the presumption** in § 3044.

Rebuttable presumption applies to domestic violence that has occurred in the previous 5 years. (Source https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3044.)

Child <u>support</u> standard = calculation is based upon various factors including each parent's actual income, and time allotted with the children. See, e.g. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=4053.A parent's first and principal obligation is to support his or her minor children – this is presumed to be a mutual responsibility. See the online child support calculator: http://www.childsup.ca.gov/Resources/CalculateChildSupport.aspx.

Parents often think a 50-50 physical custody order means no one will have to pay child support. This is only true if their incomes and allowable deductions are identical. **In almost all cases, some child support amount is appropriate**.

Child support **cannot be modified retroactively except to the day a motion (request for order) is filed**. In other words, if the client has been ordered to pay child support that he does not think is accurate based on his current circumstances, he/she must file a motion right away to modify support. The client cannot go back in time and argue he/she should not have had to pay support, or that he/she actually needed support, any further than the date you filed your motion. Therefore, if the support order is not correct, he/she should look into filing a motion RIGHT AWAY to protect himself.

Child support **can always be modified if there is a change in circumstances** (change in income, change in custody timeshare, a new child born to either parent, etc.). The standard is best interests of the child, which means that, as long as the guideline calculation has changed, the client can modify support. The ***exception*** to this rule is **if the parties agree** to support below the guideline calculation. This can be modified at any time with no need to show change of circumstances.

At any time, a parent **can open a case with the Department of Child Support Services (DCSS)** to enforce or modify support. DCSS is effective and free, but they can be very slow. If someone needs to modify an

unfair child support order, they should probably not wait for DCSS to file for them, as that can take 9-12 months.

Parents often think a 50-50 physical custody order means no one will have to pay child support. This is only true if their incomes and allowable deductions are identical. In almost all cases, some child support amount is appropriate.

A. Considering Changes to Order

CLA-LA regularly sees clients in need of help with modifying or enforcing existing court orders governing the custody of minor children or child support. We recommend volunteers listen to the client's story and review the existing court order before providing advice on how to proceed.

Did the client bring the existing court order?

If not, check to see if the order is available on the court website or if the client can obtain a copy from the courthouse where the order was granted. The order will help determine the client's current status and the best strategy for any future changes or enforcement. *The order will NOT be available online if it is a Los Angeles county case*.

If the client does not have the order, you can still provide advice about how to communicate with the other parent to voluntarily agree to the change.

Has the client tried to negotiate a modification with the other parent?

Clients who are divorced or separated may struggle with communication. Even when circumstances change, parents sometimes leave an out-of-date order in place rather than modifying the order or clearly establishing a new arrangement. This is less than ideal and may leave clients later unable to enforce their rights.

Where practicable, CLA-LA attorney volunteers should help clients communicate with the other parent to find common ground and implement reasonable solutions. When encouraging the client to communicate with the other parent, please remind him of the following:

- Where it is healthy and safe to do so, it is preferable that both parents remain part of the child's life. In the absence of substance abuse, domestic abuse, abandonment, etc., parents should be encouraged to develop respectful communication strategies to make this possible.
- Compromising benefits the ENTIRE family because it helps families move on and heal, instead of holding onto anger and hostility.
- The court mandatorily requires (either in the existing order or local rules) that the parties mediate before the court will hold a hearing to modify a child support, custody, or visitation order. Negotiating now with the other parent could save time if both parents agree because the court will require mediation before a hearing.

If the parties are able to negotiate and voluntarily **agree** to a modification of the current order, then they **must sign a Stipulation and Order and file it with the court** for a Judge's signature. Otherwise, the old order will remain in effect and trump the verbal agreement in the event of a future dispute.

For more information on negotiating and requesting modifications of an existing order, see **Requesting Changes to Court Orders**.

What changes appear reasonable given the child's best interests?

Explore possible win-win situations with the client. When exploring "win-win" situations, it may be helpful to explain the legal standards that the court will use, particularly if it seems that the client's decisions are influenced by personal emotions.

- **Child Custody Standard: Best Interest of the Child**
  - If abuse or domestic violence is present, there is a presumption against the abuser having custody, which may require limited time share or supervised visits. Cal. Fam. C. § 3044.
  - "Legal custody" refers to the right to make important decisions regarding the child's religion, education, and medical treatments. "Physical custody" refers to the parent with whom the child lives. See, e.g., Cal. Fam. C. § 3083.
- **Child Support Standard – Income/Time Calculation**
  - The standard is calculated using various factors including each parent's actual income and allotted time with the child. See, e.g., Cal. Fam. C. § 4053. A parent's foremost obligation is to support the minor child; this is presumably a mutual responsibility.
  - See the **online support calculator** at: www.childsup.ca.gov/Resources/CalculateChildSupport.aspx

How can clients identify potential compromises during the clinic?

Discovering common ground is difficult but important in family law disputes because it encourages the client to be receptive and seek compromise. Helping a client find common ground with the other parent will require asking specific questions that explore why a change or enforcement of the current order is required, what caused the current impasse, and whether they are a good parent.

Use the following questions to help the client identify areas for potential compromise during the negotiation with the other parent.

a) Questions regarding the current order:

1. What does the current order require?
2. What does the client want to change? Why?
3. Did both parents anticipate this change at the time the prior order was entered?

b) Questions regarding family relationships:

1. Do both parents communicate with each other?
2. How close is each parent to the child?

3. When is each parent available to care for the child?

c) Questions to identify the best motives for cooperation:

1. Are there any ways that the other parent has been good to or helpful with the child?
2. How can we encourage both parents to work together to support and care for the child?
3. Do the parents share common values or a common faith?
4. Does the client have safe friendships or a support network to help them during this process?

d) Questions to identify a win-win situation:

1. What would the best-case scenario look like for the children?
2. What are the client's concerns about the other parent?
3. What could the other parent do to reduce those concerns?
4. What concerns does the other parent have about the client?
5. How can the client address those concerns?

B. Requesting Changes to Order

Has the client communicated their request to the other parent?

If the client has not yet communicated the request, CLA-LA first recommends that the client communicate the need for a change using the client's common means of communication (as long as it is respectful). For example: "I may need to talk to you about a change in our custody (or child support) arrangement. Is there a good time for you to chat, or should I just email you?"

If the parties have begun to communicate, advise the client to create a **communication plan**. When creating a communication plan for the client, be sure to include the following:

1. **Deadlines** - Include deadlines for responses to remind the client to follow up.
2. **Changes** - List the proposed changes to the child custody and support order.
3. **Proposed Stipulation** - Prepare a stipulation list in case the client comes to an agreement with the other parent. See below on memorializing agreement.

CLIENT INSTRUCTIONS

For an outline of steps to take when communicating requested changes to the other parent, along with a sample letter/email, see the **Agreeing to Modify Child Custody or Support** client instructions.

Has the client reached an agreement with the other parent about the modification?

If so, encourage the client to make the negotiated agreement enforceable by completing and filing the appropriate Stipulation and Order(s) with the court.

- **Stipulation to Establish or Modify Child Support and Order (FL-350)**

  - If there is a negotiated agreement, the form must detail the agreement negotiated between the parties.
  - Both parents must sign the stipulation form before it is filed!
- **Stipulation and Order for Custody and Visitation (FL-355)**

The client must also include an attachment to Form FL-355 that sets forth the new order. The client may use the appropriate form(s):

- Visitation Order Attachment (FL-341)
- Children's Holiday Schedule Attachment (FL-341(C))
- Additional Provisions – Physical Custody Attachment (FL – 341(D))
- Joint Legal Custody Attachment (FL – 341(E))

These and other relevant forms may be found at www.courts.ca.gov/1187.htm.

Has the client failed to reach an agreement with the other parent?

If so, the client may need to proceed to **mediation** or **litigation**. Please see these sections in the manual for more information.

i. Mediation

Is the client willing to mediate the dispute with the other parent?

If the client has never participated in mediation, please take the time to explain mediation. Ensuring that the client understands mediation may alleviate anxieties and allow for a more relaxed, positive experience.

In mediation, the parents will sit down with an impartial third person ("mediator") to discuss areas of disagreement and try to reach an agreement. The mediator will likely spend some time talking individually to the client and to the other parent to encourage open communication.

During mediation, clients should focus on the best interests of the child. If the client focuses on the child's best interests, then mediation will be much easier. It is permissible for clients to bring counsel to the mediation. If you think it would benefit the client to bring counsel, speak with the Executive Director for a possible referral.

For a more detailed description of mediation, please see the section on Negotiation and Mediation.

Is client ready to contact the other parent about the possibility of mediation?

If the client has not tried mediation, CLA-LA generally recommends that the client send a short, personal email or letter to the other parent inviting him to mediate. A letter from CLA-LA may be perceived as aggressive when the client needs the other party to cooperate.

SAMPLE LETTER PROPOSING MEDIATION

Dear _____,

Though we have discussed changes to the child support (or custody) order, we cannot seem to come to an agreement. I know we both love _____, and we should resolve our differences. I recently went to a legal-aid clinic to try to learn about other ways we could try to resolve our differences, and the lawyers recommended that we try to use free family mediation to help us, rather than getting the courts involved. I prefer to try meeting with someone outside the court system before I ask the court to modify the order.

I would really like to try to schedule the mediation as soon as possible to avoid hurting our child, and relieve the tension this problem is causing. Please let me know if you are available on _____ to attend a free mediation.

I will need to confirm this schedule with the neutral mediator by _____, so please let me know within 5 days if you would like to try to mediate this dispute. I really believe we can solve this problem ourselves, without getting the courts further involved in our family.

Thank you.

Is the client prepared for mediation?

Before the client participates in mediation, please assist him with the preparation of documents that can be used during the process.

Advise the client to **gather and bring all copies of prior communications** about the disputed issue. If the client was unable to do so, determine whether any details can be remembered.

- **Prepare a list of potential concerns and support for the reasonableness of the client's position**:
  - Will the client facilitate the child's relationship with the other parent? Courts are more likely to award custody to the parent who will not cut off access to the other parent.
  - Will the child have his own room?
  - How will the child be integrated into the family?
- **Prepare 2 timelines**:
  - Relationship Timeline - Include when the client met the other parent; when they began living together; when they got married (if applicable); when they first separated; total number of separations; and what counseling (if any) was done.
  - Personal Timeline - Include date of remarriage (if any); births of other children; contacts with other family members (grandparents, siblings); education and work history; and history of substance abuse, drinking or domestic violence.

Has the client requested Court mediation?

If the client tried to negotiate and/or mediate outside the court system and was unsuccessful, the client may want to consider mediating through the courts.

California Family Law requires the parents to mediate when a petition to modify a custody or visitation order appears contested. Cal. Fam. C. § 3170(a). However, this does not apply in cases of domestic violence.
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3170.&lawCode=FAM

There is no charge for mediation provided by the family court services of the Los Angeles Superior Court.

Does the client understand the Court mediation process?

The mediator for court-mandated mediation is a court employee who is required to have a master's degree in social science and typically also holds a license in clinical social work or marriage, family, and child counseling. Several Los Angeles Superior Court Mediators speak Spanish.

During mediation, the mediator **will meet with the parents together and/or individually** to develop an understanding of the family history and identify areas of disagreement. The mediator and both parents will work together to come to an agreement regarding legal and physical custody, holiday and vacation schedules, transportation, and other areas that are specific to the needs of the children.

If the client has been the **victim of domestic abuse** by the other parent, they can request **separate sessions**. Additionally, if there is an appearance of intimidation between the parents, the mediator may initiate separate sessions.

Ideally, agreements reached in the mediation process will reflect a **sustainable compromise** by the two parents. However, mediation agreements may be cancelled before the next court date or within ten days of signing the agreement, whichever occurs first.

How can the client request Court mediation?

Please check the existing court order and court rules to determine if the client must participate in court ordered mediation before filing a request to change or enforce existing custody or support orders.

*Los Angeles Superior Courts require parents to participate in **both**:*

- A mediation education program. This can be completed online through Our Children First at ww2.lasuperiorcourt.org/ourChildrenFirst/ui/index.aspx or in-person on the first Thursday of each month at the Stanley Mosk Courthouse, Room 233, 111 N. Hill Street, Los Angeles, CA 90012. The orientation provides useful information to help the parents draft their agreement.

- **A court operated mediation session**. If the client has a Family Law case number and a pending court hearing, or is in the process of filing for a hearing, they can file a request at http://www.lacourt.org/MediationApptRequest/ui/request.aspx. Otherwise, the client must call the Mediation office at (213) 830-0835.

ii. Litigation

If the client is unable to negotiate or mediate a stipulation , then the client must file a Request for Order (FL-300) with the court to modify the prior order. The client will have the burden of proof. See Cal. Fam. C. § 3087.

If there is **already a judgment in the case**, the court will only consider changing a custody order if there has been **a significant change in circumstances** since the court's previous decision was made. *Note: the "change in circumstances" standard does NOT apply to child support orders that were previously entered below the web calculator amount*.

If there is **no judgment in the case**, a "**best interest of the child**" standard is used. Stable, consistent custody arrangements are presumably best for the children.

Did the client prepare and submit a request for court mediation?

California Family Law **requires the parents to mediate** when a petition to modify a custody or visitation order appears contested. The client must prepare and submit a request for mediation before proceeding to litigate. To complete the request, the client may call (213) 830 – 0835 or fill out the form online at http://www.lacourt.org/MediationApptRequest/ui/request.aspx.

For more information, see the **page discussing mediation**.

Did the client prepare the necessary documents?

If no, please advise the client to complete the **Request for Order Form** (FL-300). Please assist the client with drafting the declaration for the Request for Order Form. The declaration should explain what custody or visitation plan the client believes is best for the child and why. If it is a modification request, the declaration should explain which circumstances have changed to justify the request.

if the client is requesting orders relating to child support or spousal support, the client should fill out an **Income and Expense Declaration** (FL-150) with two months of current pay stubs or Simplified Financial Statement (FL-155). If they are self-employed they must attach the last 2 years of tax returns.

The client may also want to fill out the **Child Custody and Visitation Application Attachment** (FL-311). This is an optional form that goes into detail about schedules for visits and helps ensure the client does not leave anything out of their request.

CLIENT INSTRUCTIONS

Provide the client with the **Child Custody or Support Modification Client Instructions**. If necessary, also provide them with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

Did the client properly file the documents with the court?

If the client has already filed the documents, ensure that the client has obtained a conformed copy, stamped by the court clerk at the time of filing as proof.

If the client has not yet filed, please instruct the client of the following:

- Before the client files the documents with the court, he should **make 2 copies of each form**; the original should be filed with the court, one copy should be kept for personal record, and the remaining copy must be served on the other parent. The client should also two-hole punch the top of the documents.
- If possible, the client should also meet the **Family Law Facilitator** at court to review all the documents before filing.
- At the filing window, the client should obtain a **conformed copy** stamped by the court clerk at the time of filing as proof of proper filing.
- Court fees, which include fees for a court reporter and interpreter for non-English speaking litigants, may vary. If the client is eligible for a **Fee Waiver** (FW-001), explain how to fill out the form.
- The client can also fill out the Child Custody and Visitation (Parenting Time) Application Attachment Form FL-311. This form is optional but can be useful to ensure nothing is left out. https://www.courts.ca.gov/1187.htm?rdeLocaleAttr=en.

CLIENT INSTRUCTIONS

Provide the client with the **Child Custody or Support Modification Client Instructions**. If necessary, also provide them with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

Did the client serve the other parent?

Assist the client in preparing Proof of Personal Service and instruct client to have a third party serve the papers and sign the Proof of Personal Service Form.

The forms that are served on the other parent should include:

- A copy of the client's request to change the prior order (Request for Order FL-300);

- A blank Responsive Declaration to Request for Order (FL-320), and
- Any other forms the court indicated the client must serve on the other parent. *The court will indicate which, if any, other forms must be served on Form FL-300*.
- If there are no check marks in the "Court Order " section, the client can serve the other parent by mail.

The client must ensure that the other parent is **served 16 court days before the hearing** (meaning that weekends and holidays do not count; add 5 calendar days if mailed). **Cal. Civ. Proc. § 1005**. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1005.

The client should **file a signed Proof of Personal Service** (FL-330) or **Proof of Service by Mail** (FL-335) with the court after a third party has served the other parent the documents and completed the form. The client should keep a conformed copy of the proof of service.

CLIENT INSTRUCTIONS

Provide the client with Service of Process Client Instructions and help them write down the appropriate forms, service recipients, and deadlines for their reference.

C. Responding to Requests for Modification

CLA-LA recommends that volunteers first **review the existing court order and proposed change**. In addition, please keep in mind that the client should negotiate/mediate with the other parent even while litigating.

Did the client bring the existing court order or the request?

If the client did not bring the existing court order, check to see if the necessary documents are available on the court website. *An order will NOT be available online if it is a Los Angeles county case*. If the order is not accessible online, a copy will likely be available at the courthouse in the filing clerk's office. Without the existing court order, it will be difficult to prepare new documents to resolve the dispute.

Has the client tried to negotiate a change with the other parent?

Encourage clients to resolve the dispute before the court hearing, but remind them that they must also continue to respond in a timely fashion. See "**Considering Changes to Court Order**" for questions that may help determine whether the client can find common ground with the other parent and reach a fair compromise.

Did the other parent file and timely serve the request?

The other parent must serve the following documents **at least 16 court days** (meaning that weekends and holidays do not count) before the hearing set by the court (add 5 calendar days if mailed). Cal. Civ. Proc. § 1005. The client should receive the following documents from the other parent:

- Mediation Request Form (only if a mediation date was not stamped on the conformed copy of the Request for Order);
- Request for Order (FL-300); and
- Income and Expense Declaration (FL-150) or Simplified Financial Statement (FL-155).

Client's **response** to the request must be served **at least 9 court days** (meaning that weekends and holidays do not count) before the hearing (add 5 calendar days if mailed). Cal. Civ. Proc. § 1005(b). The proof of personal service must be filed with the court in a timely manner.

Has the client responded to the requested change?

The client should prepare the following documents to file and serve:

- Responsive Declaration to Request for Order (FL–320); and
- Income and Expense Declaration (FL–150), or Simplified Financial Statement (FL–155); and
- Proof of Personal Service (FL–330 or FL-335 by Mail).

CLIENT INSTRUCTIONS

Provide the client with Service of Process client instructions and help them write down the appropriate forms, service recipients, and deadlines for their reference.

D. Parentage

When parties are not married, **parentage must be established** before the client has a legally enforceable right to custody, visitation, or child support. Before a parentage determination, the client should seek **voluntary agreement** regarding custody and child support. It will show that the client genuinely cares about the best interests of the child and is actively involved.

i. Establishing Parentage by Consent

Do the parents agree on parentage?

A Declaration of Paternity (CS-909) must be signed to establish paternity. If the Declaration was not signed in the hospital at the time of the birth, it must be signed in front of a notary or at one of the following:

- Local child support agency
- County registrar of births
- Family Law Facilitator at the local superior court, or
- County Welfare Offices (e.g. Department of Social Services or Department of Health and Human Services)

The Declaration of Paternity form may be obtained at any of these public agencies. Additionally, a client may request for one to be sent via mail by emailing askpop@dcss.ca.gov.

A Declaration of Paternity must be filed by mail. The Declaration should be sent to: *Department of Child Support Services, Paternity Opportunity Program, P.O. Box 419070, Rancho Cordovo, CA 95741-9070*.

The Declaration of Paternity must be mailed **within 20 days of being signed**.

What does it mean to sign a Declaration of Paternity?

If the client signs a Declaration of Paternity, they are giving up the right to:

- A trial in court to decide the issue of paternity;
- Paternity (DNA or blood) tests;
- Notice of any hearing on the issue of paternity;
- The opportunity to present their case to the court, including the right to present and cross-examine witnesses; and

- A lawyer to represent them.

After parentage is established, each parent has an equal responsibility to support the child and an equal right to custody of the child.

Once paternity or parentage is established, it can be **difficult or impossible to undo** — even if DNA/blood tests later show that the father is not the biological parent of the child.

How can a client cancel a Declaration of Paternity?

If either parent changes their mind regarding paternity they must complete a **Declaration of Paternity Rescission** (CS-915).

The rescission form must be filed with the California Department of Child Support Services **within 60 days of signing the Declaration of Paternity**. If the client was under the age of 18 at the signing of the Declaration of Paternity, the rescission form must be filed **within 60 days of the client turning 18**.

If the client is not eligible to complete a Declaration of Paternity Rescission (Form CS-915), they can still try to cancel the Declaration of Paternity by going to court. An overview of how to bring a court action to cancel a voluntary Declaration of Paternity is provided below.

- Fill out a **Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity** (Form FL-280).
    - Read the Information Sheet for Completing Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity (Form FL-281). It has detailed instructions to help fill out Form FL-280.
- **File the original copy of all forms** with the court and **make sure each of the following parties has a copy** of all the forms:
    - The client
    - The local child support agency
    - The other parent
- **Serve a copy of the papers on the other parent at least 16 days before the court hearing** (unless page 1 of Form FL-280 in the "Order" box says time is shortened for the hearing or service; in that case, follow those deadlines). When serving the other parent also include a blank Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity (Form FL-285).
- **Serve the local child support agency with a copy of the court papers if they are involved in this case** (usually, when they are the "Petitioner" in the case). Have the LCSA served in person at least 16 days before the court hearing (unless page 1 of Form FL-280 in the "Order" box says time is shortened for the hearing or service; in that case, follow those deadlines).
- Have the process server fill out a **Proof of Personal Service** (Form FL-330) for the other parent in the case and 1 for the LCSA if they are involved. If the other parent (or the LCSA) is served by mail, the server fills out a Proof of Service by Mail (Form FL-335). File the proofs of service with the court.

The other parent (and the LCSA if involved) should be served **at least 16 days before the hearing**.

CLIENT INSTRUCTIONS

Provide the client with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

If the judge approves the application, the client and the other parent each must have a genetic (DNA) test. For example,

- If the genetic tests show that the father listed on the Declaration of Paternity cannot be the child's father, the judge will make an order saying this person is not the father.
- If the tests show that the father on the declaration is the child's father, all court orders based on the declaration will remain in effect. The declaration can also be used to ask for orders for child custody, visitation, or child support.

If the judge does not approve the application, all court orders based on the Declaration of Paternity will remain in effect. The declaration can be used to ask for orders for child custody, visitation, or child support.

Is the client responding to an application to cancel a voluntary Declaration of Paternity?

If the client has been served with a Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity (Form FL-280), they will need to do the following:

- Fill out the **Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity** (Form FL-285).
- File the original copy of all forms with the court and make sure each of the following parties has a copy of all the forms:
  - The client
  - The local child support agency
  - The other parent
- **Serve a copy of the Responsive Declaration on the other parent in the case**. Serve the local child support agency with a copy of the client's court papers if they are involved in this case (usually, when they are the "Petitioner" in the case).
- Have the server fill out a Proof of Service by Mail (Form FL-335) for the other parent in the case and for the LCSA if they are involved.
- File the proofs of service with the court.

The other parent (and the LCSA if involved) should be served by mail **at least 9 days before the hearing**.

CLIENT INSTRUCTIONS

Provide the client with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

If the judge approves the application, the client and the other parent each must have a genetic (DNA) test. For example,

- If the genetic tests show that the father listed on the Declaration of Paternity cannot be the child's father, the judge will make an order saying this person is not the father.
- If the tests show that the father on the declaration is the child's father, all court orders based on the declaration will remain in effect. The declaration can also be used to ask for orders for child custody, visitation, or child support.

If the judge does not approve the application, all court orders based on the Declaration of Paternity will remain in effect. The declaration can be used to ask for orders for child custody, visitation, or child support.

For more information, see www.childsup.ca.gov/Portals/0/cp/docs/cs909_english.pdf.

ii. Establishing Disputed Parentage

Can the other parent be persuaded to agree about parentage?

If the parents do not agree, advise your client to **communicate** with the other parent in order to establish parentage. It is helpful for the client to understand the **personal and legal benefits** of establishing parentage, in order to communicate them to the other parent. Remind the client of the following:

- The child has the emotional benefit of knowing the identity of his parents, which can lead to a better parental relationship.
- The child will have financial support, legal documentation with the names of both parents, access to medical records and family history, health and life insurance, the right of inheritance, and the right to veteran's benefits and/or social security.

In addition, it is useful to remember that **the man is presumed the legal father** in all of the following situations:

- He was married to the child's mother when the child was conceived or born.
- He attempted to marry the mother (even if the marriage was invalid) and the child was conceived or born during the attempted marriage.
- He married the mother after birth and agreed to have his name on the birth certificate, or supported the child.
- He welcomed the child into his home and acted as if the child were his own (this is known as "Parentage by Estoppel").

See Cal. Fam. C. § 7611 for more information.

Does the client need to obtain a Declaration of Paternity?

If communication was unsuccessful, the client can establish parentage by either asking the Local Child Support Agency for help or opening a family law case to file the following:

- Family Law Case Cover Sheet (FAM–020);
- Petition to Establish Parental Relationship (FL–200);
- Summons (Uniform Parentage – Petition) (FL–210);
- Declaration under the Uniform Child Custody Jurisdiction And Enforcement Act (UCCJEA) (FL–105); and
- Proof of Service of Summons (FL–115).

CLIENT INSTRUCTIONS

Provide the client with the Establishing Parentage Client Instructions and Service of Process Client Instructions. It may also be helpful to review parentage litigation scenarios the client may encounter based on whether the other parent agrees and/or responds to their petition.

Does the client need to serve the forms on the other parent or ex-spouse?

If the client needs to serve the other parent, advise the client to have a third party serve the following forms:

- The forms (listed above) on the other parent or ex-spouse;
- A blank Response to Petition to Establish Parental Relationship (Form FL-220); and
- A blank Declaration UCCJEA (FL—105/GC-120); and
- Signed Proof of Service of Summons (FL-115).

CLIENT INSTRUCTIONS

Provide the client with the Service of Process Client Instructions and help them write down the appropriate forms, service recipients, and deadlines for their reference.

Does the client need to file the documents and Proof of Personal Service with the court?

After the client has a third party serve the other parent or ex-spouse, the client must file documents and the Proof of Personal Service with the court. The proof of service is due after the documents are filed.

The other parent has **30 days to respond**. See Cal. Fam. C. § 7666; http://www.courts.ca.gov/1202.htm.

Does the client want to dispute paternity?

The process for disputing paternity will depend on which of the following situations is applicable to the client:

1. Paternity has not been established and the client was served with a Summons and Complaint from the local child support agency. The client must follow the procedure for responding to a complaint from the local child support agency as described above. For the Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Form FL-610), the client must be sure to check the box that says they are NOT the parent. The local child support agency will then schedule the client to provide a DNA sample.

2. Paternity has not been established and the client was served with a petition filed by the other parent.
The client must follow the procedure for responding to a petition filed by the other parent as described above. For the Response to Petition to Establish Parental Relationship (Form FL-220), make sure the client checks box 5c if they are not sure if they are the child's parent and box 5d if they are sure they are NOT the child's parent. The client can check box 7c to request genetic testing.

3. Both parents signed a voluntary declaration of paternity.
See the section on how to cancel a voluntary declaration of paternity.

4. Paternity has already been established by court order.
When a court has already determined that someone is the legal parent of a child, it is often too late to dispute paternity. Trying to have a parentage judgment set aside or canceled can be very difficult, depending on the laws that apply in the particular case and the time that has passed since the case was filed. The cases are legally complicated.

The paperwork that the client will have to file to challenge a court order establishing paternity involves complicated legal motions that they should NOT try to file on their own. It is best that the client contact the local court's family law facilitator or a family law lawyer.

5. Paternity is presumed because the parents were married.

- *A child born during a marriage is presumed to be a child of the marriage*, and the husband and wife (or, after January 1, 2005, domestic partners) are the legal parents. This is called a "conclusive presumption" which means that the presumption (that the child is a child of the married couple) cannot be disproved, even if there is evidence to disprove it. Cal. Fam. C. §7540.
- There are very limited exceptions to this rule, and they can be very complicated to figure out. Usually, the parent looking to dispute the established paternity must have filed a motion for blood tests within two years of the birth of the child. Cal. Fam. C. §7541 (b).

- If the court finds that the conclusions of all the experts, as disclosed by the evidence based on performed blood tests are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly. Cal. Fam. C. §7541 (a).
- A family law lawyer will be able to help the client figure out if they have a legal basis to dispute paternity and, even if they can do it legally, if they should do it based on other considerations.

iii. Parentage Litigation Scenarios

If the client has already filed a parentage case, they will need to take action according to (a) whether there is an agreement between the parties, and (b) whether the other parent timely filed a response to the client's paternity petition.

In all cases, the response must be filed **within 30 days** from when the petition and summons were served.

The client is responding to a petition filed by the other parent.

If the client needs to respond to a petition filed by the other parent, the client should prepare and file the following within 30 days from the date they were served:

- Response to Petition to Establish Parental Relationship (FL-220);
- Income and Expense Declaration (FL-150) or Financial Statement-Simplified (FL-155) if child support is sought by either party;
- Child Custody and Visitation Application Attachment (FL-311); and
- If parents agree – Declaration UCCJEA (FL-105) or if parents disagree – request a paternity test. Contact the Department of Child Support Services (it is usually free of charge).

The client must also serve the other parent with a copy of the Response to Petition to Establish Parental Relationship and any other attachments. The client must also fill out and file a Proof of Personal Service (Form FL-330) or a Proof of Service by Mail (Form FL-335).

If the client responding to a complaint from the local child support agency, he or she should have been served with a Summons and Complaint Regarding Parental Obligations (Form FL-600). They have 30 days from the date they were served to fill out the following forms:

- Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Form FL-610).
- Income and Expense Declaration (Form FL-150) or
- Financial Statement (Simplified) (Form FL-155)
- The client must also serve the local child support agency with a copy of the Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (Form FL-610) and have their server fill out the Proof of Service portion of the original Answer (Form FL-610).

See www.courts.ca.gov/11309.htm for more information.

CLIENT INSTRUCTIONS

Provide the client with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

There is NO agreement between the parents & the other parent did NOT file a timely response.

This situation is called a **True Default**. In this situation the client should fill out these forms:

- Request to Enter Default (Family Law — Uniform Parentage) (Form FL-165);
- Declaration for Default or Uncontested Judgment (Form FL-230);
- Judgment (Uniform Parentage — Custody and Support) (Form FL-250); and
- Notice of Entry of Judgment (Family Law — Uniform Parentage — Custody and Support) (Form FL-190).

If the client is asking for custody orders, they can fill out any of these forms that may apply to their case and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250):

- Child Custody and Visitation Order Attachment (Form FL-341)
- Supervised Visitation Order (Form FL-341(A))
- Child Abduction Prevention Order Attachment (Form FL-341(B))
- Children's Holiday Schedule Attachment (Form FL-341(C))
- Additional Provisions — Physical Custody Attachment (Form FL-341 (D))
- Joint Legal Custody Attachment (Form FL-341(E))

If the client is asking for child support, they can fill out any of these forms that apply and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250):

- Child Support Information and Order Attachment (Form FL-342).
- Child Support Case Registry Form (Form FL-191).
- *Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (Form FL-192) (there is nothing to fill out with this form, but read it carefully)*.
- Order/Notice to Withhold Income for Child Support (Form FL-195) (if you want a portion of the other parent's wages garnished (taken) for child support).
    - You can use the Instructions to Complete Order/Notice to Withhold Income for Child Support (Form FL-196).
    - When filling out Form FL-195, make sure to only write the last 4 digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy.

The client should make at least 2 copies of all the forms. One copy will be for the client's records; another copy will be for the child's other parent. The original is for the court.

The client should then turn in all their forms to the court clerk, with 2 large envelopes (addressed to each parent and with enough first-class postage for papers to be mailed back to each of them).

CLIENT INSTRUCTIONS

Provide the client with the **Establishing Parentage Client Instructions** and **highlight Scenario A**. Help the client note the appropriate forms, service recipients, and deadlines on the **Service of Process Client Instructions**.

There IS an agreement between the parents & the other parent did NOT file a timely response.

This situation is called a **default with agreement**. In this situation the client should fill out these forms:

- Request to Enter Default (Family Law — Uniform Parentage) (Form FL-165) OR an Appearance, Stipulations, and Waivers (Family Law — Uniform Parentage — Custody and Support) (Form FL-130);
- Declaration for Default or Uncontested Judgment (Form FL-230);
- Judgment (Uniform Parentage — Custody and Support) (Form FL-250);
- Notice of Entry of Judgment (Family Law — Uniform Parentage — Custody and Support) (Form FL-190); and
- Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235).
    - *If the client is the father and has reached an agreement with the mother about paternity and other issues related to their children*, he will have to sign this form to show the court that he:
        - Agrees that you are the parent of the child;
        - Understands the consequences of being the legal parent;
        - Understands that you also are giving up certain rights, like the right to a trial, the right to a paternity test, and the right to have a lawyer for the issue of paternity.
    - Also attach to the Judgment the written, notarized agreement between both parents, agreeing on paternity, child custody and visitation, and child support.

If they are agreeing to custody orders, they can fill out any of these forms that may apply to their case and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250) and your written, notarized agreement:

- Child Custody and Visitation Order Attachment (Form FL-341)
- Supervised Visitation Order (Form FL-341(A))
- Child Abduction Prevention Order Attachment (Form FL-341(B))
- Children's Holiday Schedule Attachment (Form FL-341(C))
- Additional Provisions — Physical Custody Attachment (Form FL-341 (D))
- Joint Legal Custody Attachment (Form FL-341(E))

If they are agreeing to child support, they can fill out any of these forms that apply and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250) and their written, notarized agreement:

- Child Support Information and Order Attachment (Form FL-342).
- Child Support Case Registry Form (Form FL-191).
- Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (Form FL-192) (there is nothing to fill out with this form, but read it carefully).

- Order/Notice to Withhold Income for Child Support (Form FL-195) (if you want a portion of the other parent's wages garnished (taken) for child support).
    - You can use the Instructions to Complete Order/Notice to Withhold Income for Child Support (Form FL-196).
    - When filling out Form FL-195, make sure to only write the last 4 digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy.

The client should make at least 2 copies of all the forms. One copy will be for you; another copy will be for your child's other parent. The original is for the court.

The client should then turn in all their forms to the court clerk, with 2 large envelopes (addressed to each parent and with enough first-class postage for papers to be mailed back to each of them).

CLIENT INSTRUCTIONS

Provide the client with the **Establishing Parentage Client Instructions** and **highlight Scenario B**. Help the client note the appropriate forms, service recipients, and deadlines on the **Service of Process Client Instructions**

There IS an agreement between the parents & the other parent DID file a timely response.

This situation is called **uncontested**. In this situation the client should fill out these forms:

- Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (Form FL-240);
- Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235);
- Declaration for Default or Uncontested Judgment (Form FL-230);
- Judgment (Uniform Parentage — Custody and Support) (Form FL-250); and
- Notice of Entry of Judgment (Family Law — Uniform Parentage — Custody and Support) (Form FL-190)

If they are agreeing to custody orders, they can fill out any of these forms that may apply to their case and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250):

- Child Custody and Visitation Order Attachment (Form FL-341)
- Supervised Visitation Order (Form FL-341(A))
- Child Abduction Prevention Order Attachment (Form FL-341(B))
- Children's Holiday Schedule Attachment (Form FL-341(C))
- Additional Provisions — Physical Custody Attachment (Form FL-341(D))
- Joint Legal Custody Attachment (Form FL-341(E))

If they are agreeing to child support, they can fill out any of these forms that apply and attach them to their Judgment (Uniform Parentage — Custody and Support) (Form FL-250) and their written, notarized agreement:

- Child Support Information and Order Attachment (Form FL-342).
- Child Support Case Registry Form (Form FL-191).

- Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order (Form FL-192) (there is nothing to fill out with this form, but read it carefully).
- Order/Notice to Withhold Income for Child Support (Form FL-195) (if you want a portion of the other parent's wages garnished (taken) for child support).
    - You can use the Instructions to Complete Order/Notice to Withhold Income for Child Support (Form FL-196).
    - When filling out Form FL-195, make sure to only write the last 4 digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy.

The client should make at least 2 copies of all the forms. One copy will be for you; another copy will be for your child's other parent. The original is for the court.

The client should then turn in all their forms to the court clerk, with 2 large envelopes (addressed to each parent and with enough first-class postage for papers to be mailed back to each of them).

CLIENT INSTRUCTIONS

Provide the client with the **Establishing Parentage Client Instructions** and **highlight Scenario C**. Help the client note the appropriate forms, service recipients, and deadlines on the **Service of Process Client Instructions**.

There is NO agreement between the parents & the other parent DID file a timely response.

This situation is called **contested**. It can be contested because the father has asked for genetic testing to prove paternity, or because the respondent in the case does not agree with the custody and visitation or child support requests of the petitioner.

In most courts, the client will have to file and serve a form to set a trial date. Also, most courts usually require the parents to attend a settlement conference before the trial. The client should ask the court clerk what their next step should be and whether there are any special local forms they need to fill out.

CLIENT INSTRUCTIONS

Provide the client with the **Establishing Parentage Client Instructions** and **highlight Scenario D**. Help the client note the appropriate forms, service recipients, and deadlines on the **Service of Process Client Instructions**.

E. Prisoners with Children

If the parent is or has recently been in prison, special considerations may apply. Please see the Prisoners with Children resource library for more information for incarcerated or recently released parents dealing with family matters.

http://www.prisonerswithchildren.org/resource-library/family-matters/

II. Adoption and Guardianship

What is adoption?

Adoption is the legal process of establishing a legal parent-child relationship when the adopting parent is not the child's biological or birth parent. That means that once the adoption is final, the adoptive parents have all the legal rights and responsibilities of a parent-child relationship.

If the adoptee is an adult (over 18), please refer out. Speak with the Executive Director for referral options, as CLA-LA does not currently have the resources to assist with the adoption of an adult. See https://saclaw.org/wp-content/uploads/sbs-adult-adoption.pdf

There are four types of adoptions for minors: (1) International, (2) Stepparent/Domestic Partner, (3) Independent, and (4) Agency adoptions. It is important to evaluate what kind of adoption the client will need. Agency adoptions include both adoptions from public agencies, such as foster care, and adoptions from licensed, private adoption agencies. There is a separate set of paperwork that must be filed in each situation.

Please note:

- **If the adoptee is an adult (over 18), please refer out**. Speak with the Executive Director for referral options, or visit https://saclaw.org/wp-content/uploads/sbs-adult-adoption.pdf.
- **If the child is 12 years or older,** he must agree to the adoption before the judge will approve and order the adoption. Cal. Fam. § 8602.
- **If client is interested in adopting from foster care**, the client should visit www.cakidsconnection.org to obtain additional information about the process or call (800) KIDS-4-US to obtain a list of adoption agencies in California.
- **If the client or the child is undocumented**, there may be legal ramifications for adopting. Ask the client for details to determine if the issue could be solved another way. If not, please refer the client to another legal aid organization or speak with the Executive Director for a referral.

The following resources may be useful in providing clients the additional information they seek about adoption:

- California Licensed Adoption Agencies, https://www.cdss.ca.gov/Portals/9/Adoptions/AdoptionAgenciesDirectory.pdf
Section - What is adoption? Independent Adoption Fact Sheet, https://cdss.ca.gov/inforesources/adoptions, and the Independent Adoption Fact Sheet https://www.courts.ca.gov/documents/BTB_23_1A_26.pdf

What is guardianship?

C. Guardianship is when a court orders someone other than the child's parent to have custody of the child and/or manage the child's property. There are two types of guardianship.

Guardianship of the person – In a guardianship of the person, the guardian has the same responsibilities to care for the child as a parent would. That means the guardian has full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make. A guardian can be anyone: relatives, friends of the family, or other people suitable to raise the child can ask to be legal guardians. The guardian is responsible for the child's care, including the child's:

- Food, clothing and shelter
- Safety and protection
- Physical and emotional growth
- Medical and dental care
- Education and any special needs

The guardian is also responsible for supervision of the child and may be liable for any intentional damage the child may cause. A guardianship of the person is sometimes needed when, no matter how much parents love their child, they are not able to parent. Maybe 1 or both parents:

- Have a serious physical or mental illness;
- Are in the military and have to go overseas;
- Have to go to a rehab program for a while;
- Are going to jail for a while;
- Have a drug or alcohol abuse problem;
- Have a history of being abusive; or
- Cannot take care of their child for some other reason.

The court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable, and loving environment. A legal guardian can care for a child when the parents are unable to.
https://www.courts.ca.gov/selfhelp-guardianship.htm?rdeLocaleAttr=en#:~:text=Guardianship%20of%20the%20person,-In%20a%20guardianship&text=That%20means%20the%20guardian%20has,that%20a%20parent%20would%20make.

Guardianship of the estate - A guardianship of the estate is set up to manage a child's income, money, or other property until the child turns 18. A child may need a guardian of the estate if he or she inherits money or assets. In most cases, the court appoints the surviving parent to be the guardian of the child's estate. In some cases, the same person can be the guardian of the person and of the estate. In other cases, the court will appoint 2 different people. The guardian of the estate must:

- Manage the child's money;
- Make smart investments; and
- Manage the child's property carefully.
- A guardianship of the estate is created to manage a child's property.

A guardianship of the estate is created to manage a child's property.It is needed when:

- The child owns or receives valuable property, like if a child inherited a house or a large amount of money.

A guardianship of the estate is not needed when:

- A child only owns inexpensive toys and clothing; or
- The child receives social security benefits or TANF/CalWorks (welfare).

If you are not sure if a guardianship of the estate is needed, talk to a lawyer. Click for help finding a lawyer

IMPORTANT: If a guardianship of the estate is needed, it is best to use a lawyer to set it up, and to represent the guardian of the estate. This is because the fiduciary duty (this is the highest duty the law recognizes) owed by the guardian to the child requires that all the laws and rules be followed, and that the child's assets (property) be protected. A lawyer can make sure that the guardian of the estate does everything correctly. The lawyer's fees are paid from the estate and must be approved by the court so there is protection for the child.

https://www.courts.ca.gov/selfhelp-guardianship.htm?rdeLocaleAttr=en#:~:text=Guardianship%20of%20the%20person,-In%20a%20guardianship&text=That%20means%20the%20guardian%20has,that%20a%20parent%20would%20make.
Section -What is the difference between obtaining guardianship of a child and

What is the difference between obtaining guardianship of a child and adopting a child?

The differences between Adoption and Guardianship are summarized in the chart below.

Guardianship	Adoption
• Parents still have parental rights. They can ask for reasonable contact with the child. • The court can end a guardianship if the parents become able to take care of the child. • Guardians can be supervised by the court.	• The parents' rights are permanently ended. • The legal relationship with the adoptive parents is permanent and is exactly the same as a birth family. • An adopted child inherits from his or her adoptive parents, just as a birth child would. • Adoptive families are not supervised by the court.

A. Agency or Independent Adoption

Is the client seeking an agency or independent adoption?

In an agency, international, or independent adoption the requisite forms must be completed, filed, and served. A Social Worker Report will be written, and a copy will be provided to the client. The client must then contact the court clerk for the date of the hearing. On the hearing date the client should bring the child, a self-addressed stamped envelope and his personal copies of forms ADOPT-210, ADOPT-215, and Adoption Expenses (ADOPT-230).

For more information, please see: courts.ca.gov/documents/adopt050info.pdf

Is the client ready to pursue an agency/independent adoption?

First, the client must complete all of the following forms:

- Adoption Request (ADOPT-200),
- Adoption Agreement (ADOPT-210),
- Adoption Order (ADOPT-215),
- Adoption Expenses (ADOPT-230),
- Family Law Case Cover Sheet (FAM-020).
- If the client is adopting an Native American/Indian child, the following forms are also required:
    - Adoption of Indian Child (ADOPT-220),
    - Indian Child Inquiry Attachment (ICWA-010(A)),
    - Parent of Indian Child Agrees to End Parental Rights (ADOPT-225), and
    - Parental Notification of Indian Status (ICWA-020).

The court fee to file a Petition for Adoption is $20 per adoptee. Cal. Health & Saf. C. § 103730. If the client is eligible, please provide him with and help him complete a Fee Waiver (FW-001 and FW-003). See http//cdss.ca.gov/Portals/9/Children's%20Residential/childsworld/res/pdf/feereductionform.pdf

Second, the client must file the forms in court AND serve a copy of those forms on the other party.

Third, after the client receives his copy of the Social Worker Report, he must schedule the court clerk for a hearing date. Note, on the hearing date the client should bring the child, a self-addressed stamped envelope, and forms ADOPT-210, ADOPT-215, and Adoption Expenses (ADOPT-230). (See links above)

The client should be aware that after filing:

- For an **agency adoption**, most placements occur within a few months after the family assessment has been approved, but it could take up to a year. See point 11 at https://www.cdss.ca.gov/adoptions.
- For an **independent adoption**, the time frame will vary based on when the prospective adoptive parents have been chosen by birth parents, but the department or delegated adoption agency must investigate the proposed adoption within 180 days after it receives a copy of the filed petition and 50% of the adoption fee. See https://www.courts.ca.gov/documents/BTB_23_1A_26.pdf

CLIENT INSTRUCTIONS

Provide the client with the **Agency or Independent Adoption Client Instructions**. If necessary, also provide them with the **Service of Process Client Instructions** and help them write down the appropriate forms, service recipients, and deadlines for their reference.

B. Stepparent Adoption

Has the client communicated with the other birth parent?

The other birth parent has to agree to the adoption. If she or he does not agree to the adoption, the client may still be able to adopt if:

- The other birth parent has abandoned the child for over a year and not paid any child support or seen or talked to the child.
- The client properly serves the other birth parent with the Adoption Request. The other birth parent will have to show up on the court date given on the request and object to the adoption.
- The judge decides that going ahead with the adoption is in the best interest of the child.

Cases where there is no consent from the other birth parent can be complicated. The client may want to talk to a family law lawyer to determine the best way to proceed.

If the child is 12 or older, he or she must also agree (consent) to the adoption before the judge will finalize the adoption. Children under 12 do not have to agree.

Should the client pursue a Stepparent Adoption or a Stepparent Adoption to Confirm Parentage?

To determine whether the client should pursue a **Stepparent Adoption** or **Stepparent Adoption to Confirm Parentage** the client should answer the following questions:

- Was the client a in a marriage or domestic partnership with the birthparent at the time the child was born?
- Is the client still married or still in a domestic partnership with the birth parent?

If the client answered ***yes to both*** questions then they should proceed with a **Stepparent Adoption to Confirm Parentage**. This means the client will NOT need the social worker to do an investigation or report. And the client will NOT need to go to court for a court hearing. If the client answered no to either question then they must proceed with a Stepparent Adoption Case.

Is the client ready to pursue a Stepparent Adoption?

The adoption process requires the client to complete and file the necessary forms in court. Please advise the client to make 2 copies of the completed forms. One set of copies should be retained for the client's personal records, while the other set must be served to the other birth parent. The original copies should be filed with the court.

The client must complete all of the following forms:

- Adoption Request (ADOPT-200),
- Adoption Agreement (ADOPT-210),
- Adoption Order (ADOPT-215),

The fees for a stepparent adoption, including investigation, may reach $700. If the client is eligible, please provide him with a Fee Waiver (FW-001 and FW-003https://cdss.ca.gov/Portals/9/Children's%20Residential/childsworld/res/pdf/feereductionform.pdf
Once the forms have been properly filed and served, a **Social Worker Report** will be written. The social worker may ask the client questions, require him to fill out forms, and/or charge a fee. The social worker will file the report with the court and send the client a copy.

After the client receives his copy of the Social Worker Report, he must **schedule a hearing date** with the court clerk. On the hearing date, the client should bring the child, a self-addressed stamped envelope, and personal copies of forms ADOPT-210 and ADOPT-215.

Advise the client that the **family assessment** process can take anywhere **from 6 months to a year** to complete. Most adoptive placements occur within a few months of the family assessment being approved.

CLIENT INSTRUCTIONS

See the Stepparent Adoption Client Instructions for specific steps for the client to follow. Also provide the client with Service of Process Client Instructions and help them write down the appropriate forms, service recipients, and deadlines for their reference.

Is the client ready to pursue a Stepparent Adoption to Confirm Parentage?

If the client is ready to pursue a Stepparent Adoption to Confirm Parentage, they need to complete the following forms:

- Adoption Request (ADOPT-200),
- Adoption Agreement (ADOPT-210),
- Adoption Order (ADOPT-215),
- Declaration Confirming Parentage in Stepparent Adoption (Form ADOPT-205). *The birthparent and the adopting parent must each fill out their own form.*

Please advise the client to retain a copy of the forms for themselves, while the original copies should be filed with the court.

A stepparent adoption to confirm parentage **does not require a social worker to conduct an investigation nor does it require a court hearing**. The process is complete once the forms are filled out and filed with the court.

CLIENT INSTRUCTIONS

See the **Stepparent Adoption to Confirm Parentage Client Instructions** for specific steps for the client to follow.

C. Guardianship

Does the client understand what guardianship means?

A guardianship exists when the court appoints a non-parent to (1) have custody of the minor child, and/or (2) manage the child's property (estate). These are technically *probate* guardianships. **The**

guardian will have legal and physical custody of the child, and has the same rights and responsibilities as the parents. For more general information, see http://www.courts.ca.gov/selfhelp-guardianship.htm.

Sometimes a guardian is needed when parents are not able to fulfill their parental responsibilities. A guardian might be necessary when the parent:

- Has serious physical or mental illness;
- Is in the military and has to go overseas;
- Has to go into rehab;
- Is in jail; or
- Has drug or alcohol abuse problems.
- Has a history of being abusive; or
- Cannot take care of their child for some other reason

For more information, see Cal. Fam. C. §§ 7824-27 and https://www.courts.ca.gov/selfhelp-guardianship.htm

Does the client want to obtain (probate) guardianship of a minor?

To obtain guardianship of a minor, the client must **(1) prepare the necessary documents** and **(2) give notice to the relevant parties**.

You must file a guardianship case in the county where the child lives unless there are already custody orders affecting the child that have been filed in another county.

First, the client should prepare and file the following document(s):

- Petition for Appointments of Guardian of the Person (GC-210(P)).
    - *Please explain the form to the client and have the client fill it out at home*.
- Visit the California Judicial Council website for additional forms that may be needed - www.courts.ca.gov/1212.htm.

Second, the client must give notice to all of the following parties:

- Child's parents;
- Child (if over 12 years old);
- Extended family;
- County's human services of social services department; and
- California's Department of Social Services.

The client must give notice to all relevant parties **15 days before the hearing**. Cal. Prob. C. §1511. The client may be able to file a Request to Dispense with Notice, but before doing so, he should meet with and ask the Court Family Law Facilitator (www.courts.ca.gov/selfhelp-facilitators.htm) or visit the Self Help Center (www.courts.ca.gov/selfhelp-selfhelpcenters.htm).

CLIENT INSTRUCTIONS

Provide the client with the **Becoming a Guardian** client instructions along with the **Service of Process** client instructions. Make sure the client understands the process, appropriate forms, service of process recipients, and applicable deadlines.

Was custody determined in Juvenile Dependency Court?

This guardianship information **does not apply** to clients who seek to regain custody where custody was determined in a juvenile dependency court. If custody was determined in a juvenile dependency court, the client will have to go to the dependency courts where a lawyer will be appointed. www.courts.ca.gov/1206.htm.

III. Dissolution

When a client is considering marital dissolution, attorneys should take the time to understand the client's particular situation and individual needs. If reconciliation remains a possibility, clients should be advised about available resources such as mediation and marriage counseling. Depending on the facts, clients may also need to consider other legal remedies such as child custody or restraining orders. Our goal is to help the client and his/her family come to a solution that is best for everyone involved and enables them to live in peace and safety.

REFER OUT

If the client is in the middle of divorce proceedings, he/she may need ongoing representation, which CLA-LA cannot assist with at this time. Please see below for referrals.

Although CLA-LA does not represent clients in marital dissolution cases, it may be helpful to inform them about their options if they decide to pursue that route on their own.

Is the client interested in pursuing a divorce or legal separation?

A divorce completely ends a marriage. After a divorce, the state views each person as single and either person can get married again. In California, both parties do not have to agree to the dissolution and a reason for the divorce or separation does not have to be given.

There is a married couples residency requirement for divorce. At least one spouse must have lived in California for the last **six months** and the county where the divorce is filed for the last **three months**.

A legal separation does not end a marriage in the same way that a divorce does. Any earnings made by either spouse after a legal separation are considered separate property, however the state still views

the couple as "married." A couple may prefer to be legally separated rather than get a divorce because of religious reasons, tax reasons, or government benefits.

There is a married couples residency requirement for legal separation. **At least one spouse must live in California** to file for legal separation in the state.

Both divorce and legal separation follow the same basic process. Marital status cannot legally be ended until at least six months after the case is filed and the respondent has been served with a copy of the summons and petition. The divorce will not become final on its own and requires action by both spouses.

Can the client get a summary dissolution (quick divorce)?

A summary dissolution is a relatively quick and easy way to get a divorce, and does not require talking to a judge. However, not everyone can get a summary dissolution and most people have to get a regular divorce. In order to qualify a summary dissolution, married couples must meet ALL of the qualifications below:

1 Have read the Summary Divorce Information Booklet, and understood it
2. Have been married or registered as domestic partners five years or less between the date that they got married/or registered domestic partnership and the date they separated. (Note that if they are trying to end bot marriage AND a domestic partnership at the same time through a dissolution, both marriage and dissolution partnership must have lasted five years or less)
3. No children were born to the two parties together or during the marriage and/or domestic partnership
4. Have no adopted children under 18 years of age
5. Neither one of the parties are pregnant
6. Neither one of the parties owns any part of any land or buildings
7. The community property is not worth more than $47,000. (Do not count cars in this total.)
8. Neither party has separate property worth more than $47,000. (Do not count cars in this total.)
9. The total community obligations (other than cars) is $6,000 or less

If the client meets the qualifications listed above, advise him/her to read the booklet *Summary Dissolution Information* (Form FL-810) and direct him/her to the California Courts Self Help page on summary dissolutions to find the forms that need to be completed and get more information about the process: http://www.courts.ca.gov/1241.htm.

10.

a. At least one of the parties has lived in California for the past six months or longer and has lived in the county where they are filing for dissolution for the past three months or longer; or
b. They are only asking to end a domestic registered in California; or
c. They are the same sex and were married in California but not residents of California. Neither of the parties lives in a place that allows them to divorce.

They are filing this case in the county in which they married.

11. They have prepared and signed an agreement that states how they want their possessions and debts to be divided between them (or states that they have no community property or community obligations).
12. They have both signed the joint petition and all other papers needed to carry out this agreement
13. Together with the joint petition, they will turn in the judgement of dissolution forms and two self-addressed stamped envelopes to the superior court
14. They both want to end the married and/or domestic partnership because of serious, permanent differences
15. They both agreed to use the summary dissolution procedure rather than the regular dissolution procedure.
16. They are both aware of the following facts:
    a. There is a six-month waiting period, and either of them can stop the divorce at any time during this period
    b. The date that appears on the Judgment of Dissolution of Marriage and Notice of Entry of Judgement (form FL-825) they receive form the court as the "effective date" of the dissolution is the date their divorce will be final, unless one of them has asked to stop the divore prior to the effective date
    c. After the dissolution becomes final, neither of them has any right to expect money or support from the other except that which is included in the property settlement agreement
    d. By choosing the summary dissolution procedure, they give up certain legal rights that they would have if they had used the regular dissolution procedure.

https://www.courts.ca.gov/documents/fl810.pdf

Can the client get an annulment?

An annulment **nullifies the marriage**, essentially stating that the marriage is not legally valid and never happened. A few reasons for getting an annulment include the following: there is a **prior existing marriage**, the marriage was a result of **fraud or force**, or one of the parties was of **unsound mind**. See http://www.courts.ca.gov/1037.htm for a full list of reasons. The client will need to prove to the judge that one of the reasons applies. There may also be statute of limitations concerns.

Is the client interested in mediation or marriage counseling?

CLA-LA encourages clients to consider mediation if the parties want to reconcile their differences but individual attempts at conversation have been unfruitful.

When recommending mediation to a client, please inform him/her of the following:

- Mediation provides a neutral third party to act as a go-between while the client comes to an agreement with his spouse;
- Mediation is completely confidential; and
- Mediation allows the client, rather than the court, to remain in control of the process.

If you believe your client is a candidate for mediation, please speak with the Executive Director for a referral.

For additional information regarding the mediation itself or its import, please see the **12. Negotiation and Mediation** section.

Where can the client go for help?

1. Court Self-Help Information. The California Courts website has the best self-help information available about family law and divorce proceedings.
https://www.courts.ca.gov/selfhelp.htm?rdeLocaleAttr=en

2. Legal Aid Organization -- Harriet Buhai (www.hbcfl.org)
- Address: 3250 Wilshire Blvd., Suite 710, Los Angeles, CA 90010.
- Phone: (213) 388-7515
- Details: Clients must make an appointment by calling from 10:30am to 1:30 pm, Monday through Thursday. Please note – the phone line may be very busy.
- Services: Custody and visitation, domestic violence, paternity establishment, and family support and divorce.

3. Low-Cost Family Law Firm -- Levitt Quinn (www.levittquinn.org)
- Address: 1557 Beverly Blvd., Los Angeles, CA 90026.
- Phone: (213) 482-1800, extension 300
- Details: There is an initial consultation fee and a sliding fee for ongoing representation. Clients will be seen on a first-come-first-served basis (currently the office is closed to the public due to COVID-19). Office hours are Monday to Friday, 8:30 am to 12:00 pm and 1:00 to 5:00 pm. Fill out the forms found at https://levittquinn.org/services/and email or fax to submit them.
- Services: Custody and visitation, domestic violence, paternity establishment, and family support and divorce.

2. Harriett Buhai additional contact details:
- Administrative Info: (213) 388-7505
- Email: info@hbcfl.org

3. Levitt Quinn additional contact details:
- Fax: 213-482-4225

IV. Restraining Orders

A client may seek a restraining order when they need protection from physical or sexual abuse, or when they are being threatened, stalked, or harassed. The client's situation may fall under one or more of the following categories:

A. Domestic Violence: If the client has a **close relationship** with the person they are seeking a restraining order against then the client should file a Domestic Violence Restraining Order.

B. Civil Harassment: If the client is being harassed, stalked, abused, or threatened by someone they are not as close to as is required under domestic violence cases, like a roommate, a neighbor, or more distant family members, then the client should file a Civil Harassment Restraining order.

C. Elder or Dependent Adult Abuse: If the client is **65 or older**, or is between ages 18-64 and has certain **mental or physical disabilities**, AND is a victim of a qualifying type of abuse (defined further herein), then the client should file an Elder or Dependent Adult Abuse Restraining Order.

D. Workplace Violence: If the client is an **employer** wishing to file a restraining order on behalf of an employee experiencing violence or credible threats of violence from another person then they should file a Workplace Violence Restraining Order. *Employees are not eligible to file a Workplace Violence Restraining Order for themselves and must instead file one of the three previously described types of restraining orders*.

CRIMINAL PROTECTIVE ORDER OR "STAY-AWAY" ORDER

If any of the above situations lead to **criminal charges**, the court may issue a **criminal protective order** which is effective for the duration of the criminal case, and for three years after the case is over if the defendant is found guilty or pleads guilty.

What do restraining orders do?

In the initial request for a restraining order, the client can select one or more of the following types of protection:

Personal conduct orders (*available in all cases*)
These are orders to stop specific acts against everyone named in the restraining order as a "protected person." Some of the things that the restrained person can be ordered to stop are:

- Contacting, calling, or sending any messages (including e-mail);
- Attacking, striking, or battering;
- Stalking;
- Threatening;
- Sexually assaulting;

- Harassing;
- Destroying personal property; or
- Disturbing the peace of the protected people.

Stay-away orders (*available in all cases*)
These are orders to keep the restrained person a certain distance away (like 50 or 100 yards) from:

- The protected person or persons;
- Where the protected person lives;
- His or her place of work;
- His or her children's schools or places of child care;
- His or her vehicle;
- Other important places where he or she goes.

Residence exclusion ("kick-out" or "move-out") orders (*available only for domestic violence and elder/dependent adult abuse restraining orders*)
These are orders telling the restrained person to move out from where the protected person lives and to take only clothing and personal belongings until the court hearing. These orders can only be asked for in domestic violence or elder or dependent adult abuse restraining order cases.

PRACTICAL CONSIDERATIONS & SAFETY PLANS

In counseling the client on filing a request for a restraining order, make sure it is really what they want and is best for them. Restraining orders may be necessary to remedy a situation, but involve a formal process with the court, which may or may not be what the client wants. If the client is not ready to file for a restraining order but is in a situation of abuse or violence, create a safety plan with the client for what to do to stay safe and prepare for the future.

Steps to Obtaining a Restraining Order

The client can request a restraining order by filing the proper forms with the court. The initial filing may result in a temporary restraining order, which lasts up to three weeks, and a court hearing date. The client needs to attend his or her court hearing date to then get a permanent restraining order. If the situation is severe, the client may get an emergency protective order prior to filing for a temporary restraining order by calling the police in an emergency situation and asking for one.

Temporary Restraining Order (TRO)
When the client goes to court to ask for a restraining order, they give the judge paperwork which explains the situation and why a restraining order is needed. If the judge believes the individual needs protection, he will grant a temporary restraining order by the next business day and set a court hearing date. The court hearing is also the date the temporary order runs out. **To extend it, the client must go to his or her hearing** to get a permanent order. If the client does not attend the hearing, the restraining order will end. The client also needs to properly serve the other side before the judge can make any permanent orders.

In instances of *domestic violence, civil harassment, or elder/dependent adult abuse*, the temporary restraining order usually **lasts between 20 and 25 days**. In a *workplace violence scenario*, the temporary restraining order usually **lasts about 15 to 25 days**.

"Permanent" Restraining Order
At the hearing scheduled for the TRO, the judge **may** issue a "permanent" restraining order. The client should arrive early and bring any documents that help prove the abuse (such as photos, medical/police reports, or other evidence of abuse) and 2 copies of all documents and filed forms, including the Proof of Service.

If the client is not given any or all of the orders requested, they can still go to the court hearing and ask for those orders. The judge may grant them at the court hearing, even if he or she did not grant them as temporary orders before the hearing.

These orders are not really "permanent" because they only last for a specified timeframe, but may be renewed when the restraining order runs out if the situation continues. Domestic Violence and Workplace Violence "permanent" restraining orders usually **last up to 3 years**. Civil Harassment and Elder/Dependent Adult Abuse "permanent" restraining orders usually **last up to 5 years**.

Emergency Protective Order (EPO)
An EPO is a restraining order that **only law enforcement can ask for** by calling a judge. Judges are available to issue EPOs 24 hours a day.

The emergency protective order starts right away and can last up to 7 days. The judge can order the abusive person to leave the home and stay away from the protected person for up to a week. To extend protection for a longer period of time, the victim can go to court during that week to file for a temporary restraining order.

- In *domestic violence cases*, the protection of the EPO can also extend to any children involved.
- For *civil harassment cases*, EPOs are only available in cases of stalking. If the client is being stalked, he or she can call the police and ask for an EPO.
- In *elder and dependent adult abuse cases*, an EPO can be requested, but not if the sole abuse suffered is financial abuse.
- EPOs are not requested in situations of workplace violence

A. Domestic Violence Restraining Orders

If the client is in immediate danger from domestic abuse, *encourage him to call the National Domestic Violence Hotline at (800) 799-7233 or refer to the list of domestic abuse hotlines and shelters found a*t http://www.cpedv.org/domestic-violence-organizations-california.

Does the client meet the requirements for a domestic violence restraining order?

A domestic violence restraining order helps protect the victim from abuse or threats of abuse from someone close to them. Domestic violence restraining orders have two requirements: (1) that the client

has been abused or threatened with abuse, and (2) that the client has a "close relationship" with the abuser. See Cal. Fam. C. § 6211.

Examples of a "close relationship:"

- Married or registered domestic partners;
- Divorced or separated;
- Dating or used to date;
- Living together or used to live together (more than a roommate);
- Parents together of a child; or
- Closely related (child, parent, sibling, grandparent, in-laws).

A child over the age of 12 can file for a domestic violence restraining without a parent. A parent of a child under the age of 12 can file for a domestic violence restraining order on behalf of the child to protect the child, themselves, or other family members.

What a restraining order CAN order the restrained person to do:	What a restraining order CANNOT do:
• Not contact or go near the protected person, his/her children, other relatives, or others who live with him/her; • Stay away from the protected person's home, work, or children's schools; • Move out of the house (even if the protected and restrained persons live together); • Not have a gun; • Follow child custody and visitation orders; • Pay child support; • Pay spousal or partner support (if married or domestic partners); • Stay away from any pets; • Transfer the rights to a cell phone number and account to the protected person; • Pay certain bills; • Not make any changes to insurance policies; • Not incur large expenses or do anything significant to affect protected person's or the other person's property if married or domestic partners; • Release or return certain property; and • Complete a 52-week batterer intervention program.	• End a marriage or domestic partnership. It is NOT a divorce. • Establish parentage (paternity) of children with the restrained person (if not married to, or in a domestic partnership with, him or her) UNLESS the protected person and the restrained person agree to parentage of the child or children and agree to the court entering a judgment about parentage. (Read and use Agreement and Judgment of Parentage (DV-180) to do this)

The court considers the totality of the circumstances in determining whether to grant or deny a petition for relief. Clients may be able to obtain a restraining order even if some time has passed since the most recent act of abuse. Cal. Fam. Code §6301(c).

Note Regarding Out-of-State and Tribal Court Orders: If the client has a restraining order from another state and moves to California, the restraining order will be valid throughout all of California and the police will enforce it. There is no requirement to register the out-of-state or tribal court restraining order in California, but the client may do so by submitting an Order to Register Out-of-State or Tribal

Court Protective/Restraining Order (CLETS) (DV-600) to the local court. The client also needs to take a certified copy of the order with them.

If the client is nervous about the abuser discovering where he or she lives, do NOT write their current address on the forms. Advise clients to use Safe at Home, which gives them a secure address to use for court papers. Visit www.sos.ca.gov/safeathome/.

Is the client ready to file a domestic violence restraining order?

To obtain a domestic violence restraining order, the client should prepare these documents to file:

- Request for Domestic Violence Restraining Order (DV-100)
  - *The client can indicate the requested type of restraining order on the DV-100 form*
- Notice of Court Hearing for Domestic Violence (DV-109)
- Temporary Restraining Order (DV-110)

If the client needs more space to describe why they need the restraining order, they may also fill out:

- Description of Abuse (DV-101)
- Additional Page (MC-020)

When children are involved:
If the client has children with the person they want protection from and want a custody and visitation order, or want to change the one they already have, make sure the appropriate boxes on Item 12 on Form DV-100 are checked AND fill out:

1. Request for Child Custody and Visitation Orders (DV-105) and attach it to the Request for Domestic Violence Restraining Order (DV-100)
2. Child Custody and Visitation Order (DV-140) and attach to the Temporary Restraining Order (DV-110)

If the client is concerned about the restrained from traveling with their children, the client should also fill out a Request for Order: No Travel with Children (DV-108) and attach it to the Request for Child Custody and Visitation Orders (Form DV-105).

There is **no fee** to file a domestic violence restraining order. However, clients who request frivolous restraining orders are subject to paying attorney's fees for the opposing party. Cal. Fam. C. § 6344. Caution clients about filing restraining orders except when necessary. See the California Judicial Council Website for additional forms and a thorough checklist of steps to take (DV-505-INFO): www.courts.ca.gov/1264.htm.

CLIENT INSTRUCTIONS

Provide the client with the **Domestic Violence Restraining Order** client instructions and help them understand their rights in the process. If necessary, also provide them with the **Service of Process** client instructions and help them determine the appropriate parties for service.

Is the client the recipient of a domestic violence restraining order?

If the client is the *recipient* of a domestic violence restraining order, it is very important that we take the time to remind the client of the required obligations that follow.

The client should be reminded that: (1) if he does not obey the order, he can be fined or sent to jail; (2) the client should enroll in anger management classes; and (3) it is illegal to own, possess, or have a gun or firearm while the restraining order is in effect. See Cal. Pen. C. § 273.6; Cal. Fam. C. § 6389. *If the client owns or possesses a gun or firearm, please encourage the client to turn it over to the police*.

If the client needs to respond to the order, the client must file a Response to a Request for Domestic Violence Restraining Order (DV-120). Forms are available at www.courts.ca.gov/1265.htm.

CLIENT INSTRUCTIONS

Provide the client with the Responding to A Domestic Violence Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service. The client may also need to know how to turn over their firearms.

Does the client require additional legal resources?

There are a number of private and court-based programs to assist clients who need help with domestic violence issues. These include:

- Laura's House for counseling and legal services (www.laurashouse.org);
- Neighborhood Legal Services (http://www.nlsla.org/contact-us/) ;
- LA Court's Self Help website (http://www.lacourt.org/selfhelp/abuseandharassment/SH_AH002.aspx);
- The Long Beach, Santa Monica, Antelope Valley, Pomona and Van Nuys courthouses, among others (http://www.lacourt.org/selfhelp/abuseandharassment/pdf/DomesticViolenceRestrainingOrderLocations.pdf)

B. Civil Harassment Restraining Orders

What is a civil harassment restraining order?

A civil harassment restraining order is a court order that helps protect people from violence, stalking, serious harassment, or threats of violence.

For clients who are eligible, an Elder or Dependent Adult Abuse Restraining Order may offer more help, before, during, and after, the court case than a Civil Harassment Restraining Order.

Does the client meet the requirements for a civil harassment restraining order?

Civil harassment laws say "harassment" is:

- Unlawful violence, like assault or battery or stalking, OR
- BOTH:
  - A credible (real) threat of violence, AND
  - The violence or threats seriously scare, annoy, or harass someone and there is no valid reason for it.

"Credible threat of violence" means intentionally saying something or acting in a way that would make a reasonable person afraid for his or her safety or the safety of his or her family. A "credible threat of violence" includes following or stalking someone, making harassing calls, or sending harassing messages, by phone, mail, or e-mail, over a period of time (even if it is a short time).

You can ask for a civil harassment restraining order if (1) a person has abused (or threatened to abuse), sexually assaulted, stalked, or seriously harassed you, AND (2) you are scared or seriously annoyed or harassed.

You CAN ask for a civil harassment restraining order against:	*You CANNOT ask for a civil harassment restraining order against:*
• A neighbor, • A roommate (as long as you never dated), • A friend, • A family member more than 2 degrees removed, like an aunt or uncle, a niece or nephew, cousins, and more distant relatives, OR • Other people you are not closely related to.	• Your spouse/partner or former spouse/partner, • Someone you dated at any point, OR • A close relative (parent, child, brother, sister, grandmother, grandfather, in-law).

Is the client ready to request a civil harassment restraining order?

To request a Civil Harassment Restraining Order Prepare and File:

- Request for Civil Harassment Restraining Orders (Form CH-100);
  - *The client can indicate the requested type of restraining order on the CH-100 form*
- Confidential CLETS Information (Form CLETS-001);
- Items 1 and 2 on Notice of Court Hearing (Form CH-109);
- Items 1, 2 and 3 on Temporary Restraining Order (CLETS -TCH) (Form CH-110);

- Civil Case cover sheet (Form CM-010) (ask the court clerk if you need this for your court — you may not need it);
- Additional Page (Form MC-020) if you need more space to describe why you need the restraining order; and
- Declaration (Form MC-030) or Attached Declaration (Form MC-031) for any statements of witnesses that will support your side of the story.

CLIENT INSTRUCTIONS

Provide the client with the Civil Harassment Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service.

Does the client need to respond to a civil harassment restraining order request?

CLIENT INSTRUCTIONS

Provide the client with the Responding to a Civil Harassment Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service.

C. Elder or Dependent Adult Abuse Restraining Orders

Does the client meet the requirements for an Elder or Dependent Adult Abuse restraining order?

You can ask for an elder or dependent adult abuse restraining order if:

- You are 65 or older, OR
- You are between 18 and 64 and have certain mental or physical disabilities that keep you from being able to do normal activities or protect yourself;

AND you are a victim of:

- Physical or financial abuse,
- Neglect or abandonment,
- Treatment that has physically or mentally hurt you, or
- Deprivation (withholding) by a caregiver of basic things or services you need so you will not suffer physically, mentally, or emotionally.

What can an elder or dependent adult abuse restraining order do?

A restraining order is a court order. It can order the restrained person to:

- Not contact or go near the protected person, his or her children, other relatives, or others who live with the protected person;
- Stay away from the protected person's home, work, or other places he/she goes to a lot;
- Move out of the house (even if the protected and restrained persons live together); and
- Not have a gun.

Once the court issues (makes) a restraining order, it goes into a statewide computer system. This means that law enforcement officers across California can see there is a restraining order in place.

If the client is 65 or older they may also file a Domestic Violence Restraining Order if they have a qualifying relationship.

Is the client ready to request an Elder or Dependent Adult Abuse restraining order?

To request an Elder or Dependent Adult Abuse Restraining Order Prepare and File:

- Request for Elder or Dependent Adult Abuse Restraining Orders (Form EA-100);
  - *The client can indicate the requested type of restraining order on the EA-100 form*
- Confidential CLETS Information (Form CLETS-001);
- Items 1 and 2 of the Notice of Court Hearing (Form EA-109);
- Items 1, 2 and 3 of the Temporary Restraining Order (CLETS — TEA or TEF) (Form EA-110); and
- Additional Page (Form MC-020) or Attachment to Judicial Council Form (Form MC-025) if you need more space to describe why you need the restraining order. https://www.courts.ca.gov/documents/mc025.pdf
- Civil Case Cover Sheet (Form CM-010). Not all courts require this form, so ask the court clerk to make sure you need it.

CLIENT INSTRUCTIONS

Provide the client with the Elder or Dependent Adult Abuse Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service.

Does the client need to respond to a requested Elder or Dependent Adult Abuse Restraining Order?

CLIENT INSTRUCTIONS

Provide the client with the Responding to an Elder or Dependent Adult Abuse Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service.

D. Workplace Violence Restraining Orders

Who can seek a Workplace Violence Restraining Order?

A workplace violence restraining order must be **requested by an employer on behalf of an employee** who needs protection from another person. The court order can last up to 3 years. The order can also protect certain family or household members of the employee and other employees at the employee's workplace or at other workplaces of the employer.

Does the client meet the requirements for a Workplace Violence Restraining Order?

"Employer" is defined under California law as:

- Every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether such person is the owner of the business or is operating on a concessionaire or other basis. (Lab. Code, § 350(a).)
- A federal, state, or local public agency; a city, county, district, or public corporation. (Code Civ. Proc., § 527.8(b)(3).)

"Employees" are defined under California law as:

- Every person, including aliens and minors, rendering actual service in any business for an employer, whether gratuitously or for wages or pay; whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation; and whether the service is rendered on a commission, concessionaire, or other basis. (Lab. Code, § 350(b).)
- Members of boards of directors and public officers.
- Volunteers or independent contractors who perform services for the employer at the employer's work site.

For an employer to get an order under this law,

1. There must be **reasonable proof** that the employee has **suffered unlawful violence** (like assault, battery, or stalking) **or a credible threat of violence**;
2. The unlawful violence or the threat of violence can reasonably be construed to be carried out or to have been **carried out at the workplace**;
3. The conduct is not allowable as part of a legitimate labor dispute; and
4. The person accused is not engaged in constitutionally protected activity.

DEFINING "CREDIBLE THREAT OF VIOLENCE"

"Credible threat of violence" means intentionally saying something or acting in a way that would make a reasonable person afraid for his or her safety or the safety of his or her family. A "credible threat of violence" includes following or stalking someone, or making harassing calls or sending harassing messages by phone, mail, or e-mail, over a period of time (even if it is a short time).

Is the client ready to file a Workplace Violence Restraining Order?

To obtain a Workplace Violence Restraining Order, the client should prepare these documents:

- Petition for Workplace Violence Restraining Orders (Form WV-100). This form tells the judge the facts of the petitioner's (the employer's) case and what orders the petitioner and employee want the court to make.
    - If the employer is seeking orders based on information from the employee and others and not based on what he or she has personally observed, each of those persons must complete a declaration to attach to the Petition (WV-100), using the Attached Declaration form (MC-031)
    - *The client can indicate the requested type of restraining order on the WV-100 form*
- Confidential CLETS Information (Form CLETS-001). This form does not get filed. It is confidential. It is used so that your restraining order can be entered into a statewide computer system that lets police know about your order.
- Items 1, 2 and 3 of the Notice of Court Hearing (Form WV-109). This form gives the parties in the case the date and time of the hearing.
- Temporary Restraining Order (CLETS-TWH) (Form WV-110). The judge may issue a temporary restraining order (TRO) to give protection to the employee until the hearing happens. The judge can issue it with or without notice to the respondent.
- Civil Case Cover Sheet (Form CM-010)

The client can indicate the requested type of workplace violence restraining order on the WV-100 form. For more information, see the Form WV-100 instructions.

Is the client the recipient of a Workplace Violence Restraining Order?

The client should be reminded that: (1) if he does not obey the order, he can be fined or sent to jail; (2) the client should enroll in anger management classes; and (3) it is illegal to own, possess, or have a gun or firearm while the restraining order is in effect.

Remind the client to attend the hearing on the restraining order, which is listed on the Notice of Court Hearing (Form WV-109). If the client does not go to the hearing, the judge can make the restraining order without hearing their side of the story.

If the client wants to tell their side of the story they can respond to the order. The client must file a Response to Petition for Workplace Violence Restraining Order (Form WV-120) BEFORE their court date.

CLIENT INSTRUCTIONS

Provide the client with the Responding to a Workplace Violence Restraining Order client instructions and help them understand their rights in the process. If necessary, also provide them with the Service of Process client instructions and help them determine the appropriate parties for service. The client may also need to know how to turn over their firearms.

V. Child Abuse

Is the client accused of child abuse or neglect?

CLA-LA does not assist in these matters as we do not have the resources to do so at this time. Please speak to the Executive Director to refer the client to either private attorneys or the Los Angeles Dependency Lawyers.

If the child is being taken because of abuse or neglect, the parent has a right to an attorney appointed by the court if he does not have the money to hire one. A child will separately have his own attorney and possibly a court-appointed special advocate.

Is there child abuse that needs to be reported?

If a *client* wants to report child abuse, advise him to call the **Department of Child & Family Services Child (DCFS) Abuse Hotline** at **(800) 540-4000**. If *you* suspect child abuse, call the DCFS Abuse Hotline number (above) and follow up with the DCFS using the referral number you are given on the call.

It is important to report abuse when you have good reason to believe the child is being injured. You may report child abuse notwithstanding attorney-client privilege if the report is made because of a good faith belief that there is risk of serious injury to the child if the abuse goes unreported. You must have reasonable certainty that abuse is occurring.

3. CRIMINAL LAW

CONTENTS

Many of the clients we serve at CLA-LA need assistance with criminal law issues. These cases require CLA-LA attorney volunteers to be compassionate listeners because criminal pasts often present substantial obstacles (i.e., employment, background checks, child custody) for clients going forward.

About 42 states allow for some form of expungement. *50-State Comparison: Expungement, Sealing & Other Record Relief*, COLLATERAL CONSEQUENCES RES. CTR., https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside/ (last visited Jul. 1, 2022).

Generally, the primary criminal issues we address at our clinics are **expungements** (petitions to dismiss), **reclassifications** (Propositions 47 & 64), and **traffic citations or tickets**. Volunteers who assist with these issues have a unique opportunity to help our clients make the most of their lives moving forward. There are, however, certain matters that require specialized assistance or ongoing representation. CLA-LA refers those cases out to a public defender or private defense attorney as needed.

For criminal cases filed in Los Angeles County, basic information about the case including past court appearances and sentencing can be found by entering the case number at http://www.lacourt.org/criminalcasesummary/ui/.

I. Expungement and Record Clearance

The criminal justice system in approximately 26 states recognizes the need for "legislated grace" – the ability to expunge certain criminal records. These states recognize that individuals who paid their debts to society should have the opportunity to move forward with gainful employment. Note, in California, there is no true expungement; instead, certain convictions may be "dismissed in the interest of justice."

Please note that criminal convictions may have significant **immigration consequences**. For information on advising clients with immigration issues about post-conviction relief (including Prop 47 reduction), please see the resources compiled by Californians for Safety and Justice at http://myprop47.org/resource-links/.

A. Preliminary Considerations and Eligibility

In general, California state convictions may be expunged if (1) the client is not currently charged with or serving a sentence for any crime; (2) the client did not serve any time in prison for the conviction they wish to expunge; and (3) the conviction is not for one of the specified serious offenses which are always ineligible for expungement.

***Effective January 1, 2023, pursuant to Senate Bill (SB) 731, all prison cases, unless the client must register as a PC 290 sex offender, are eligible to petition the court to expunge/dismiss those convictions.**

Does the client need help with a Federal or Military crime?

There are limited circumstances allowing for the expungement of Federal and/or Military crimes. CLA-LA refers out clients with Federal and Military crimes as we do not have the resources to assist with these cases.

For Federal crimes: Refer the client to a Federal Public Defender for help. Call (213) 894-2854 or check www.courts.ca.gov/1070.htm or www.fpdcacd.org/ for other links.

For Military crimes: Refer the client to the applicable Judge Advocate General's (JAG) Office. To find a local Military General Legal Services Office, visit https://legalassistance.law.af.mil/

- NAVY
  - Criminal Law - (202) 685-7298
  - AJAG - (202) 685-7053
- AIR FORCE

  - Edwards Air Force Base Legal Assistance – (661) 277-4310
  - Los Angeles Air Force Base Legal Assistance – (310) 653-3084
- ARMY - (703) 693-0638

- Army: Joint Forces Training Base Los Alamitos 78th Legal Operations Detachment (562) 795-2699

Effective 01/01/2015, California Penal Code 1001.80 created a military diversion program for veterans or active-duty personnel facing misdemeanor charges and suffering from trauma or mental health problems. If they successfully complete treatment, they will avoid a conviction and have the criminal charge dismissed.

If the client does not have or did not bring the necessary documents (i.e. the client's criminal record), please advise the client to obtain his or her criminal record.

For convictions in Los Angeles County, the client should ask his or her public defender or probation officer if they can provide a copy of the docket/judgment. The client can also go to **any criminal court clerk's office** in the county and ask for their own criminal record; this should be provided free of charge.

Live Scan Fingerprinting process. Fill out BCIA 8016RR form and bring it to the Live Scan site.

Live Scan site submits it to California Department of Justice: Record Review Unit.

https://oag.ca.gov/fingerprints/record-review#:~:text=All%20California%20Applicants%20must%20submit,the%20%E2%80%9CType%20of%20Application%E2%80%9D.

Criminal Records - Request Your Own | State of California - Department of Justice - Office of the Attorney General

For criminal cases filed in Los Angeles County, A client can also find all of their case numbers in Los Angeles County for $1.00 by entering their name and date of birth here: https://www.lacourt.org/paonlineservices/pacommerce/feeInformation.aspx

Additional charge for more pages with a maximum fee of $40.00.

For a state or nation-wide criminal record search, the client must submit **Live Scan Fingerprinting**.

Fill out BCIA 8016RR form and bring it to the Live Scan site. Live Scan site submits it to California Department of Justice: Record Review Unit. https://oag.ca.gov/fingerprints/record-review#:~:text=All%20California%20Applicants%20must%20submit,the%20%E2%80%9CType%20of%20Application%E2%80%9D.
Criminal Records - Request Your Own | State of California - Department of Justice - Office of the Attorney General

Live Scan has locations all over California and their services cost from $15-$35. Live Scan location in LA county can be found here: https://oag.ca.gov/fingerprints/locations?county=Los%20Angeles. The client must then submit his or her Live Scan fingerprints along with a **$25 fee** to California Department of Justice: Record Review Unit, P.O. Box 903417, Sacramento, CA, 94203-4170. The client can expect to wait up to 2 months to receive the record.

Fee Waivers are available on the CA DOJ website, but due to the minimal nature of the fee, obtaining waiver may not be worthwhile. http://www.lccr.com/wp-content/uploads/DOJ-RAP-Sheet-Fee-Waiver-Forms2014.pdf

CLIENT INSTRUCTIONS

The Live Scan Client Instructions provide a detailed step by step process for the client to follow.

To see additional instructions in English, please visit http://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/instructions.pdf?.

To obtain additional instructions in Spanish, please visit https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/instructions-espanol.pdf

If the client believes that the criminal record that they receive is incorrect they are able to challenge specific entries. To challenge an incorrect record, the client needs to complete Form 8706, which they receive with their criminal record and return to the Department of Justice.

Is the client currently on probation or parole?

Clients are generally **ineligible** to petition for dismissal/expungement if they currently have any **pending charges** or if they are **on probation/parole.**

In some cases, it is possible for clients to get an early release from probation. The client will need to file a **Motion for Early Termination of Probation** in the court where the client was convicted. The client will have a hearing where the client will need to convince the judge that they deserve to be discharged from the probation term early.

The client will have the best chance of getting released early from probation if the client has not violated probation in any way, has completed the requirements of probation (finished all classes, paid all restitution and fines, etc.); and is at least halfway through the probationary period. Courts also often consider other positive efforts in the client's life, such as employment or efforts to find a job; community service or volunteer work; and educational pursuits or school accomplishments.

Pursuant to AB 2147, a client that was assigned to Fire Camp while in prison or jail is eligible to have parole or probation terminated early and have the conviction expunged.

CLIENT INSTRUCTIONS

See Client Instructions on **Motion for Early Termination of Probation** for a step by step guide.

Are the convictions ineligible for expungement?

If the client was **sentenced to prison**, that conviction typically cannot be expunged, regardless of the underlying charge.

***Effective January 1, 2023, pursuant to Senate Bill (SB) 731, all prison cases, unless the client must register as a PC 290 sex offender, are eligible to petition the court to expunge/dismiss those convictions.**

There may be an exception for a felony that has now been designated as a misdemeanor for all purposes under Proposition 47. If the crime has been designated a misdemeanor after the client served a prison sentence, he or she should still be eligible for an expungement under Cal. Pen. C. § 1203.4a.

In addition, the following convictions are ineligible for expungement under Cal. Pen. C. § 1203.4(b):

- Any infraction under California Vehicle Code section 42001 (violations of any local ordinance, minor traffic tickets, pedestrian and bicycle offenses);
- Any misdemeanor under California Vehicle Code section 42002.1 (failing to stop and submit to vehicle inspection, refusing to comply with orders from law enforcement officer or firefighter, unsafe condition that endangers a person);
- Any conviction (felony or misdemeanor) under California Penal Code sections 286(c), 288, 288a(c), 288.5, 289(j), 311.1, 311.2, 311.3, 311.11; or a felony conviction under CA Penal Code sections 261.5(d)

If there is no conviction and the client is trying to destroy the arrest record, please see the Arrest Record manual section.

Does the case require a Petition for Dismissal?

There are certain criminal cases that do not require the client to file a Petition for Dismissal.

Marijuana possession conviction after 1975: These records are destroyed after 2 years unless the client was convicted for transportation of more than 28.5 grams of marijuana, or cultivation or sale of marijuana. Cal. Health & Saf. C. §§ 11357(b), 11361.5(a); and 11361.7.

Drug diversion programs: Please review Cal. Pen. C. § 1000.1(a)(3). If this section applies, ask if the client has had a hearing regarding the withdrawal of his guilty or no contest plea, and if he has not, advise the client to contact the Public Defender's Office.

- A Penal Code 1000 plea is essentially a deferred entry of judgment (DEJ). If the client pled guilty and successfully completed the drug rehabilitation program, the charge against him will be dismissed.
- If the client was a juvenile at the time he was granted a Penal Code 1000 plea and he successfully completed his program, the charge will be dismissed and his juvenile record pertaining to that particular case will be automatically sealed. The client should check with the court to confirm this was done.

If the charge has been dismissed under Cal. Pen. C § 1000.3, as a deferred entry of judgment (DEJ), then the offense is still eligible for an expungement, even if no record is found. A client may want to consider an expungement if they are not a citizen or if they are facing immigration proceedings. See Box 6 on the CR-180 form.

Effective 06/27/2018, Mental Health Diversion pursuant to Penal Code 1001.36 is a program that allows a client to receive treatment in lieu of prosecution upon successfully completion of the treatment.

B. Statutory Options for Reduction or Dismissal

Was the client convicted of a felony subject to Proposition 47?
Is the client ready to apply/petition for Proposition 47 resentencing?
Was the client convicted of a felony that is NOT reducible to a misdemeanor?
Was the client convicted of a marijuana-related offense that is affected by Proposition 64?
Is the client ready to apply for Prop. 64 relief?
Was the client a juvenile when convicted of a Proposition 64 offense?

California voters have passed two propositions that allow individuals to have certain criminal convictions reduced or dismissed. **Proposition 47** reduces qualifying low-level, non-violent felonies to misdemeanors. **Proposition 64** reduces or eliminates criminal penalties for some marijuana-related offenses.

Was the client convicted of a felony subject to Proposition 47?

With the passage of Proposition 47 in November 2014, certain low-level, non-violent crimes that were potential felonies will now be designated misdemeanors. See "See drop down "Reclassification of

Theft and Drug Possession Offenses" at https://www.courts.ca.gov/prop47.htm Cal. Pen. C. § 1170.18. If the client has been convicted of one of the following felonies, he/she may petition to have it reduced to a misdemeanor:

- Shoplifting, i.e Commercial Burglary of $950 or less of a Store during business hours (Cal. Pen. C. § 459.5); Forgery, Cal. Pen. C. § 473, of financial instruments listed in Cal. Pen. C. § 437(b), if the amount of the item does not exceed $950; Does not apply if also convicted of identity theft under Cal. Pen. C. § 530.5.
- Passing of bad checks, Cal. Pen. C. § 476(a), if the aggregate amount of the checks does not exceed $950;
- Petty Theft, Cal. Pen. C. § 490.2, any theft if the value does not exceed $950.
- Grand theft, Cal. Pen. C. § 487, if the value of the stolen property does not exceed $950;
- Receiving stolen property, Cal. Pen. C. § 496(a), if the value of the stolen property does not exceed $950;
- Possession of Methamphetamine, Cal. Health & Saf. C. § 11377;
- Possession of Controlled Substance, Cal. Health & Saf. C. § 11350;
- Possession of Concentrated Cannabis, Cal. Health & Saf. C. § 11357(a).

DISQUALIFYING PRIOR OFFENSES

Even if the client was convicted of a qualifying felony, he may be ineligible for Prop 47 relief. **Clients with prior convictions for certain sex offenses, murder, attempted murder, assault with a machine gun on an officer, or any serious or violent crime punishable by a life sentence are not eligible under Prop 47.** Those required to register as sex offenders are also ineligible.

Is the client ready to apply/petition for Proposition 47 resentencing?

If the client's conviction is subject to Proposition 47, the client must submit a Record-Change Application or Petition to the courthouse of the county he was convicted in. He must also provide a copy of the form to the District Attorney's Office. A ***Petition*** must be filed if the client is **currently serving his sentence** for the eligible felony. An ***Application*** must be filed if the client has **already completed his sentence**. See Cal. Pen. C. §§ 1170.18 (a), (f).

For Petitions or Applications in **Los Angeles County**, please use the *Application/Petition for Resentencing and People's Response* (Form CRIM235) and the special proof of service form (Form CRIM237), available at www.lacourt.org/forms/criminal. For other counties, visit www.safeandjust.org/recordchange#countyforms.

The Petition or Application must be filed with the sentencing court prior to **November 4, 2022**, unless the client is able to show good cause for filing late. Cal. Pen. C. § 1170.18(j).

If the client requires additional assistance with filing Proposition 47 Applications/Petitions, the client should contact his local Public Defender's Office. Please visit https://pubdef.lacounty.gov/ : https://apd.lacounty.gov/

Was the client convicted of a felony that is NOT reducible to a misdemeanor?

For clients who were convicted of felonies that are NOT reducible to misdemeanors, expungement may be available if the client was sentenced to **jail or probation**, but not if they were sentenced to **state prison**. (Jail = a police holding cell or a county jail with sentences of less than 1 year; prison = a state institution with imprisonment 1 year or more.)

If expungement is not available, the client can still seek a **Certification of Rehabilitation** and then a **Pardon.** Cal. Pen. C. § 4852.01. The client will need 5 years of living in California with a clean record (and an additional 5 years for sex crimes) before requesting a Certificate of Rehabilitation. Cal. Pen. C. § 4852.03. Contact a public defender for a certificate and the Board of Parole for a pardon.

For more information on Prop 47, please visit:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4852.01.&law

Code=PEN

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4852.03.&node

TreePath=6.12.3&lawCode=PEN

https://www.courts.ca.gov/prop47.htm.

Was the client convicted of a marijuana-related offense that is affected by Proposition 64?

The passage of Proposition 64 legalized the possession, cultivation, sale, and transportation of marijuana in California, and reduced or eliminated criminal penalties for marijuana-related offenses. Thanks to its passage, individuals with the following marijuana-related convictions may get these convictions **redesignated or dismissed** if they are **not in custody, on probation, post-release community supervision, or parole**:

- Possession of marijuana or concentrated marijuana, Cal. Health & Saf. C. § 11357
- Possession with intent to sell marijuana, Cal. Health & Saf. C. § 11359
- Sale or transport of marijuana, Cal. Health & Saf. C. § 11360
- Cultivation of marijuana, Cal. Health & Saf. C. § 11358

In certain circumstances, the conduct for the following convictions may now be legal, but the law does not currently specify relief for those who have been convicted of these offenses:

- Opening or maintaining place for unlawfully selling, giving away or using drugs, Cal. Health & Saf. C. § 11366

- Renting, leasing, or making a building, room, or space available for the unlawful manufacturing or storing of drugs, Cal. Health & Saf. C. § 11366.5

Please advise the client to contact the Public Defender for updates regarding the law.

Please refer to the **Proposition 64: Changes to Criminal Penalties Chart (Adults)** to see whether the client's conviction can either be dismissed or reduced to a misdemeanor or infraction. https://www.courts.ca.gov/documents/prop64-Memo-20161110.pdf

Individuals who are currently in jail or prison, on probation, post-release community supervision, or parole may get these convictions resentenced so long as they do not pose "an unreasonable risk of danger to public safety" by being at risk of committing a "super strike" under Cal. Pen. C. § 667(e)(2)(C)(iv). Please advise them to contact the Public Defender or the attorney who represented them in their case.

Is the client ready to apply for Prop. 64 relief?

The client can apply for relief if the client has been convicted of an offense listed above, served his/her sentence, and would have been guilty of a lesser offense under Proposition 64. https://drugpolicy.org/sites/default/files/Prop64-Resentencing-Guide-July2017.pdf

The client will need to complete an **application and order for redesignation** (Form CR-400, Form CR-403) and file the application with the court where he/she was convicted. Please make two copies of the application so that clients can keep one copy for their records and serve the District Attorney with the second copy. A person over the age of 18 will need to serve the District Attorney and fill out the **Proof of Service** (Form CR-401).

A judge will review the application to determine whether to redesignate or dismiss the conviction. The District Attorney has the burden of proof to establish by clear and convincing evidence that the client is ineligible. There may be a hearing if the amount of marijuana involved is in question. Otherwise, the applicant will most likely be notified by mail once the conviction has been redesignated or dismissed.

The possession or use of marijuana is still considered illegal for immigration purposes. Please advise non-citizens to refrain from admitting to possession or use to any immigration official. The re-sentencing relief in Prop. 64 might not be accepted for immigration purposes, so non-citizens should consider other forms of post-conviction relief as well.

Was the client a juvenile when convicted of a Proposition 64 offense?

Juveniles may only be charged with infractions for the offenses listed above. Juvenile records will be destroyed and sealed two years after the date of conviction or when the juvenile turns 18. See the Juvenile Records section of the manual for information regarding other juvenile convictions.

An adult who committed a Proposition 64 offense as a juvenile may still want to apply for dismissal because it may take time for these changes to be reflected in the client's records.

C. Petition for Dismissal (Expungement)

In general, CLA-LA can only assist clients who are **not currently on probation or parole** (and who have **no pending charges**) to request dismissal of **California state crimes** for which the client **has the appropriate records** with them. If the client does not meet this description, or for more information regarding non-expungeable offenses, see section on **Eligibility**.

In California, what is colloquially termed an "expungement" is actually a Petition for Dismissal. This means that the conviction record is not destroyed or hidden; rather, the conviction is changed to a dismissal "in the interest of justice." *It is important to note that the expungement does not erase the offense from a client's criminal record or RAP sheet. It changes the record to show the conviction was dismissed.*

What does expungement do?

Expungement **removes convictions** from a client's criminal record and changes the case disposition to "**Dismissed in the Interest of Justice** Pursuant to Penal Code 1203.4."

A client can lawfully say they were "**not convicted**" of a charge that has been dismissed. **Most private employers will not see a dismissed conviction** on a background check, and California law prohibits employers from considering dismissed convictions in hiring or other employment decisions. See the [MR] **Background Checks** [/MR] section for more information.

With an application for a **professional or occupational license**, an expungement can help a client's chances because it is seen as evidence of rehabilitation. Moreover, licensing boards in the State of California are not allowed to use an expunged conviction as their reason for denying a license application, though they may look at the facts underlying the case as part of their consideration.

If a client was denied federal student loans because of a drug conviction, he/she will become eligible again after an expungement.

In some cases, a felony conviction can be reduced to a misdemeanor prior to or simultaneously with a dismissal. If the client qualifies, this is important to consider and may have benefits beyond those of expungement alone.

What does expungement NOT do?

An expungement **does not remove the case information from public court records or from a client's criminal history**, it simply changes the disposition from "convicted" to "dismissed." If the client faces later criminal charges, the expunged conviction still counts as a prior conviction and will still count as a "strike" under California's Three Strikes law.

Expungement does not restore the right to possess a **firearm** if this right was lost due to a conviction. If the dismissed conviction required the client to **register** as a sex offender, that requirement will remain in place. Expungement will not prevent the **DMV** from suspending or revoking the client's license. Expungement does not remove the **immigration consequences** of the client's conviction, so Immigration and Customs Enforcement can still use the expunged conviction as cause for removal or exclusion.

Can the client apply for a reduction under Penal Code § 17(b)?

If the client was convicted of a wobbler offense - one that could be charged either as a felony or a misdemeanor - and was granted probation, their felony conviction is eligible for reduction to a misdemeanor under 17(b). This may be done at the same time and on the same form as an expungement, or it may be requested separately, even after the felony has been expunged. There is no Judicial Council form for standalone 17(b) reduction requests.

What forms are required to request an expungement (i.e. Petition for Dismissal)?

The client is required to complete the Petition for Dismissal (Form CR-180) and the Order for Dismissal (Form CR-181). It is also highly recommended that the client complete a Declaration (Form MC-031) and a Fee Waiver (Form FW-001). Multiple convictions from the **same case** (same case # and conviction date) may be included on a **single petition**.

Petition for Dismissal (Form CR-180) – Required

- Attorney Information: Put client's name, address, phone, and email address.
  - Write "In Pro Per" in the space after "Attorney For (Name)".
- Case Information: After "Defendant," write client's full name as was written before.
  - Fill in the "case number" box on the top right.
  - Box 1**:** Write the **date of the conviction**/plea, not the date of crime. Also, write the type of offense the client was convicted of. If the client was convicted of a felony and seeks to reduce the felony to a misdemeanor as permitted under Cal. Pen. C. § 17(b), he must write whether the offense is eligible for such a reduction. (See https://www.courts.ca.gov/42537.htm.)
- Box 2: **If the client's sentence included PROBATION**, check this box. Check all of the boxes that apply (a, b, and/or c).
  - Check (a) if probation was completed.
  - Check (b) if client was released from probation early.

    - Check (c) if client did not complete probation or had probation violations and requests relief in the interests of justice.
- Box 3: **If the client was NOT granted probation**, check this box instead of Box 2.
    - Check (a) if client complied with the sentence and has since lived an "honest and upright life."
    - Check (b) if client did not complete sentence and requests relief in the interests of justice.
- Box 4: Check this box instead of Box 2 or 3 if the client was convicted of Cal. Pen. C. § 647(b) and was a victim of human trafficking. Attach a declaration (Form MC-031) and relevant documents establishing that the client was a victim.
- Box 5: If the client was convicted of a felony and sentenced to county jail pursuant to Cal. Pen. C. § 1170(h)(5), check this box instead of Boxes 2 or 3.
    - Check (a) if the client was sentenced with a period of mandatory supervision AND 1 year has passed since supervision was terminated.
    - Check (b) if the client was not sentenced with a period of mandatory supervision AND 2 years have passed since the sentence was completed.

  Box 6: Check Box 6 if the client was sentenced to state prison for a felony that, if committed after the October 1, 2011 Realignment Legislation, would have been eligible for sentencing to a county jail; that two years have elapsed since completion of the sentence and the defendant is not under supervision, and is not serving a sentence for, on probation for, or charged with the commission of any offense. Cal. (Pen. C. §1203.42)
- Box 7: Check Box 7 instead of 2, 3, 4, 5 or 6 if the client's case was dismissed under Cal. Pen. C. § 1000.3. Complete subsections (a) and (b) based on the availability of court records in the case.
- After Box 6, beginning with "Petitioner requests..," the client MUST check one of the following boxes:
    - If the client was sentenced to probation, check the first box 1203.4.
    - If the client was not granted probation, check the second box 1203.4a.
    - If the client was sentenced under Cal. Pen. C. § 1170(h)(5) and seeks dismissal, check the third box 1203.41.
    - If the client was granted DEJ under Cal. Pen. C. § 1000.3, check the fourth box 1203.43.
    - If the client was convicted of Cal. Pen. C. § 647(b) and was a victim of human trafficking, check the fifth box 1203.49.

Order for Dismissal (Form CR-181) – Required
Only fill in the name and address information at the top.

Declaration (Form MC-031) – Sometimes Required

- Write full name at the top left under DEFENDANT as it appeared in the case.
- Write case number on the top right.
- In the big blank area under DECLARATION, fill in the client's statement. If more room is needed, write "Please see attached declaration."
- The Declaration is a humble apology, and a respectful request. It should be short and concise. Be sure to include:
    - Admission of guilt and acceptance of fault (not blaming others).
    - How client has improved and made up for past mistakes.
    - How the criminal record is impairing ability to work, get housing, custody, etc.
    - Conclusion asking for granting of the petition.
- Client must date, print name, sign the bottom, and check the DEFENDANT box.

Fee Waiver Request (Form FW-001) – Optional

- Fill sections 1 and 2.
- Fill in court address, case number, and case name (if any) on the top right.
- In section 3, write "In Pro Per."
- In section 4, check the first box unless this is an appeal.
- In section 5, if client can check box (a), then skip the entire second page. OTHERWISE, check box (b) or (c) if it applies.
- In section 6, check if the client filed a fee waiver for this same case in the past 6 months.
- Client must date, print name, and sign the bottom of the page.
- Complete the second page financials if section 5(a) was NOT checked.
-

Senate Bill (SB) 731

Automatic Conviction Relief

As of July 1, 2022, the Department of Justice (D)J) shall grant automatic relief, including dismissal of a conviction, without requiring a petition or motion by a party for that relief pursuant to Penal Code (PC) § 1203.425. On a monthly basis, the DOJ shall review the records in the statewide criminal justice databases, and based on information shall identify persons with convictions that are eligible for automatic conviction relief if they are not required to register pursuant to the Sex Offender Registration Act, do not have an active record for local, state, or federal supervision in the Supervised Release File, not serving a sentence for an offense or pending criminal charges, no indication that the conviction resulted in a sentence of incarceration in the state prison, the conviction occurred on or after January 1, 1973, if probation was granted, it must not have been revoked, and if the defendant was convicted of an infraction or misdemeanor, and probation was not granted, the sentence must have been completed and one calendar year has elapsed since the date of judgment.

Additional Expungement Relief

Effective 01/01/2023, PC § 1203.41 will be ***amended*** to include a felony that resulted in a sentence to the state prison if that felony did not result in a requirement to register as a sex offender. Commencing July 1, 2023, pursuant to PC 1203.425(a)(1), the DOJ will review records in the statewide criminal justice databases, and provide automatic conviction relief if the person is not required to register as a sex offender for convictions that occurred on or after January 1, 2005 and a four year period has elapsed since the completion of the sentence, and there was not a new felony offense committed during that time.

Other Relief

Penal Code 653.22 PC – Loitering for Prostitution. Commencing January 1, 2023, PC 653.22 is repealed. Loitering with the intent to commit prostitution is no longer a crime. People with past convictions for this crime can petition to the court for a **dismissal and record seal** as per PC 653.29.

Change in Registration Requirements for most Sex Offenses

Effective January 1, 2021, SB 384 transitioned California's lifetime sex offender registration schema to a tierbased schema. SB 384 established three tiers of registration for adult registrants for periods of 10 years, 20 years, and life, and two tiers of registration for juvenile registrants for periods of 5 years and 10 years. SB 384 allows the registrant to petition the superior court or juvenile court for termination of their sex offender registration requirement on or after their next birthday after July 1, 2021, following the expiration of their mandated minimum registration period.

Vacatur Relief to Human Trafficking Victims

Effective January 1, 2017, pursuant to Penal Code § **236.14,** vacatur relief laws authorize courts to **vacate and seal** criminal convictions and arrests that were the result of the person being trafficked.

Intimate Partner Violence/Sexual Violence Victim Conviction Relief?

Effective January 1, 2022, Penal Code § 236.15 allows any victim of intimate partner violence or sexual violence, either as a juvenile or as an adult, and the crimes were committed while a victim of intimate partner violence or sexual violence, the arrest and/or conviction records can be vacated and sealed.

COURT-SPECIFIC FEE WAIVERS

Please note: some courts may require a **different fee waiver form**. Clients should be advised to check with the clerk at the criminal division. In Los Angeles, the **Compton, Long Beach, and CCB** courthouses require use of form **CR-115**.

Proof of Service (Form POS-040) – May Be Required

- Check the court website where convicted to determine if service is required.
- If service is required, print form for client and have the client arrange service.

D. Certificate of Rehabilitation

What is a Certificate of Rehabilitation?

A Certificate of Rehabilitation is another way to clean up a client's criminal record. It is a court order that states someone who was previously convicted of a crime is now officially rehabilitated. This can help the client's chances of acquiring work, housing, and professional licenses. An application for a COR automatically acts as an application and recommendation for a full pardon from the Governor.

A Certificate of Rehabilitation will NOT:

- Erase a felony conviction or seal a criminal record.
- Prevent the conviction from being considered a prior/strike if the client is later convicted of a new offense.
- Allow the client to say they have never been convicted of a felony.

A Certificate of Rehabilitation can:

- Relieve specified sex offenders of further duty to register. (Pen. Code § 290.5(a))
- Enhance a person's potential for becoming licensed by state boards. (Pen. Code § 4853)
- Serve as an official document to demonstrate a person's rehabilitation, which could enhance employment possibilities.
- Serve as an automatic recommendation and application to the Governor for a pardon.

Is the client eligible for a Certificate of Rehabilitation?

Determining your Eligibility

If you have been arrested but there were no charges filed by the prosecutor's office.

PC 851.8(a) states that "In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the offense."

If you have been arrested and charges were filed but no conviction occurred (the underlying case was dismissed or you were acquitted through a California jury trial)…

PC 851.8(c) states that "In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made.

The client is **never eligible** for a COR if:

- The client was convicted of certain serious sex offenses (CA Penal Code §§269, 286(c), 288, 288(a)(c), 288.5, 288.7, or 289(j)
- The client is on mandatory lifetime parole
- The client has been sentenced to the death penalty
- The client is serving in the military
- The client no longer lives in California

The client needs to meet all requirements for at least one of these three categories in order to be eligible for a Certificate of Rehabilitation:

Category One: Felony, released before 1943, and all the following are true:

- The client was convicted of a felony
- The client served their sentence in a California state prison (or some other CDCR facility, like a prison camp or hospital)
- The client completed their sentence and was released from prison or released on parole before May 13, 1943
- The client has NOT been incarcerated in any CA state prison since their release; and
- The client has lived in CA for the last 3 years

Category Two: 1203.4 Dismissals (Expungements), and all the following are true:

- The client was convicted of a felony or convicted of a misdemeanor sex offense;
- The client's conviction was expunged under CA Penal Code section 1203.4;
- The client has not been incarcerated ANYWHERE since getting their conviction expunged;
- The client is not on probation for any other felony; and
- The client has lived in CA for the last 5 years

Category Three: Felony, released after 1943, and if all of the following are true:

- The client was convicted of a felony
- The client was sent to state prison for this conviction, or was already were in state prison on May 13, 1943 for the conviction, and
- The client has lived in CA for the last 5 years

When can the client apply for a Certificate of Rehabilitation?

Clients must complete any term of probation, or parole that was part of the sentence or was a condition of release prior to applying for a Certificate of Rehabilitation. In addition, there must be a certain amount of time of rehabilitation before applying for a COR. This time is counted as beginning at the client's release from prison or jail, and includes any time spent on probation or parole.

To figure out how much time the client must wait before pursuing a COR, add the base term of 5 years plus an additional amount of time based on the conviction offense. Consider the following:

- Base 5 years + 2 years = 7 years if conviction was for:
    - CA Penal Code §§311.2(b), (c), or (d), 311.3, 311.10, or 314
    - Any offense not listed here that does NOT carry a life sentence
- Base 5 years + 4 years = 9 years if the conviction was for:
    - CA Penal Code §§ 187, 209, 219, 4500, or 18755;
    - Military & Veterans Code §1672(a), or
    - Any other offense that carries a life sentence
- Base 5 years + 5 years = 10 years if the conviction was for:
    - Any offense that requires the client to register as a Sex Offender under CA Penal Code §290 (including any conviction for an attempted offense)
    - Exception: If the conviction was for §§311.2(b), (c), or (d), 311.3, 311.10, 314, the client only needs to wait 7 years (see above)

Note: The client can in some circumstances apply for a COR before the end of their period of rehabilitation, but they must have a very good reason to give to the judge; it must serve the "interest of justice."

How can the client apply for a Certificate of Rehabilitation?

A certificate of rehabilitation may be granted when the judge finds that the client:

- Has lived an honest and upright life,
- Has behaved with sobriety and industry,
- Has shown good moral character, and
- Has obeyed all laws since their release.

The client must fill out BOTH the *Notice of Filing for Certificate of Rehabilitation* and the *Petition for Certificate of Rehabilitation.* These forms are available from the court, probation department, public defender's office, or some court websites.

Clients have the right to have an attorney or the Public Defender help them request a certificate of rehabilitation. In Los Angeles, clients can contact the **Certificate of Rehabilitation Paralegal** at **Los Angeles County Public Defender's Office, 210 West Temple St, 19th Floor, Los Angeles, CA 90012, (213) 974-3057.**

More information can be found in the Sacramento Public Law Library's Certificate of Rehabilitation packet, available at https://saclaw.org/wp-content/uploads/sbs-certificate-of-rehabilitation.pdf.
A Certificate of Rehabilitation and Pardon Instruction Packet may be obtained from this court and may be found at www.lacourt.org.

CLIENT INSTRUCTIONS

If the client is eligible for a Certificate of Rehabilitation, refer him to the Public Defender's Office and/or provide them with the **Petition for Certificate of Rehabilitation Client Instructions** and the appropriate forms.

Can the client seek a Governor's Pardon?

A Governor's Pardon is an official forgiveness for a conviction. Traditionally, it is only granted to individuals who have demonstrated exemplary behavior following conviction for a felony. Unfortunately, it is very difficult to get a Governor's Pardon.

Anyone who has been convicted in California state court of a felony or of certain misdemeanor sex offenses is eligible for a pardon. Clients are NOT eligible to apply for a pardon if they only have misdemeanor convictions that are not sex offenses. *Remember, even if the client is eligible to seek a pardon, these are discretionary and rare.*

What a Governor's Pardon can do:

· Allow an ex-felon to serve on a jury. (Code Civ. Proc. § 203.5(a)(5)).

· Allow certain ex-felons to be considered for appointment as a county probation officer or state parole agent, but not to any other peace officer positions. (Gov. Code § 1029)

· Allow specified sex offenders still required to register after obtaining a Certificate of Rehabilitation to be relieved of the duty to register. (Gov. Code § 290.5(b)(1)

What a Governor's Pardon *doesn't* do:

- A pardon does not seal or erase the record of a conviction.
- It does not allow the client to say they have never been convicted of a felony on applications for employment, housing, or professional licenses.
- A pardon does not prevent a conviction from being considered a "prior" or "strike" if the client is convicted of a new offense in the future.
- If the client was convicted of a felony involving the use of a dangerous weapon, then a pardon does not restore their gun rights.
- A pardon does not prevent the client from being deported or eliminate immigration consequences of the conviction.

How to get a pardon (there are three ways):

- ***Certificate of Rehabilitation:*** By getting a COR first, the pardon is automatically sent to the Governor.
- ***Traditional Pardon:*** If the client is not eligible for a COR, then this is their best option. The request for a pardon is submitted directly to the Governor.
- ***Board of Parole Hearings Recommendation:*** The Board of Parole Hearings may recommend a pardon for the client if they are still in prison. This is usually based on good conduct, unusual sentence, or another good reason.

Step by step guide for Motion for Early Termination of Probation.

https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-

record/expungement-appendix/motion-for-early-termination-of-probation/

Are the convictions ineligible for expungement?

Add Proposition 64 with Proposition 47 in the lightbulb section.

https://www.sandiegocounty.gov/content/sdc/public_defender/prop_64_faq.html#16

Add to section listing Penal Code sections 286(c), 288, 288a(c), 288.5, 289(j), 311.1, 311.2, 311.3, 311.11, felonies under 261.5(d): (generally sexual acts with minors and child pornography)

E. Arrest Records

In California, pursuant to Penal Code 851.8, there is a process by which an individual can seal and destroy his or her arrest records. Once your arrest records have been sealed and destroyed, all the records (including police reports, fingerprints, rap entry and booking photos) are deleted. Thereafter, you can legally and confidently say "no" if an employer asks you whether you have been arrested on a job application. A person who wins a 851.8 motion is also declared, "Factually Innocent" of the charges. That's why an 851.8 motion is sometimes referred to as a "Petition for Factual Innocence."

On October 12, 2017, the California Legislature passed Senate Bill 393, the Consumer Arrest Record Equity (CARE) Act, which offers a second possible procedure to conduct arrest record sealings. This new law took effect on January 1, 2018. The CARE Act added Section 851.91 to the California Penal Code.

Using the new procedures outlined in this statute, a person who was arrested but ultimately not convicted of a crime may now petition the court to have his or her California arrest record completely expunged.

Although both PC 851.8 and the new PC 851.91 statutes involve arrest record sealings, there are important differences in terms of the requirements and effects of these motions.

The main difference in terms of eligibility of these two statutes come down to the difference between being "legally innocent" and "factually innocent."

- PC 851.8 involves persons who are "factually innocent" of the crimes. In order words, "no reasonable cause" exists to believe that you committed the offense and you should never have been arrested in the first place.
- On the other hand, the new PC 851.91 statute involves persons who are "legally innocent" of the crime they were arrested for. In other words, you were never found guilty beyond a reasonable doubt and were never convicted of any crime.

The two statutes also provide different levels of safety in terms of sealing your arrest record. For example, an 851.8 arrest record sealing permanently removes your record for all purposes, while an 851.91 sealing has some limitations.

If the client was **not convicted** and wants to destroy an arrest record, please advise your client that a petition to destroy an arrest record is generally not necessary and rarely granted. Please be mindful of how unfair this particular situation may seem.

Petition to seal and destroy your records

If you have been arrested and no charges were filed, PC 851.8 requires that you submit a "Petition to Seal and Destroy Arrest Records" to the arresting law enforcement agency. The agency then has the option to agree to the petition or deny it. If granted, the police will seal your records for three years. After three years, they will destroy your records. If you do not hear back from the arresting law enforcement agency within 60 days after you have submitted your petition, it has been denied. A formal petition for factual innocence will then need to be filed in Superior Court. A hearing will then be held on the question of your factual innocence in front of a judge.

If your case was dismissed, or you were acquitted by a jury, there is a slightly different mechanism. In these cases, you must submit your petition directly to the Superior Court that would have jurisdiction over your case. A copy of the petition must be filed with the DA's office so they can respond. A hearing will then be held on the question of your factual innocence in front of a judge.

Time to submit your petition

If the person can show good cause, the judge has discretion to hear your case beyond these deadlines (that is 2 years after the date you were arrested or the date that charges were filed against you).

Judges usually hold a short hearing where witnesses testify to determine whether to grant or deny your petition to seal and destroy your California arrest records. The judge has to make a decision as to whether or not you are "factually innocent" of the charges against you. This is the most difficult part of these types of hearings. You will need to prove to a judge that there was no "reasonable cause" to arrest you in the first place. If you can prove this, the judge will grant your petition and order your arrest records to be sealed and destroyed permanently. It will be as if the arrest never happened.

Should your client conclude that this is important, please assist the client in preparing a **Petition to Seal and Destroy an Adult Arrest Record** (BCII 8270). The client must:

- Have fulfilled all requirements from any prior conviction;
- Confirm that there are no current charges pending; and
- Compile evidence and prepare a declaration to prove FACTUAL innocence. Cal. Pen. C. § 851.8. *Note: clients may also seal their arrest record if they were charged but ordered to a diversion program and not convicted.*

The Petition to Seal and Destroy Adult Arrest Record must be filed **within 2 years of the client's arrest**. Cal. Pen. C. §851.8(l).

Automatic Arrest Relief

As of July 1, 2022, pursuant to PC § 851.93on a monthly basis, the DOJ will review records in the statewide criminal justice databases and identify persons who are eligible for records of arrest relief without requiring the filing of a petition or motion. Under existing law, a person is eligible for arrest record relief if they were arrested on or after January 1, 1973, and the arrest was for a misdemeanor and the charge was dismissed or criminal proceedings have not been initiated within one year after the arrest, or the arrest was for a felony punishable in the county jail and criminal proceedings have not been initiated within 3 years after the date of the arrest.

F. Juvenile Records

Who can see a non-sealed juvenile record?

Under the law, juvenile court and police records are generally confidential and not visible to the public or others except in certain cases. Since juvenile cases are known as "adjudication" and not "convictions," the client can legally say they have no convictions based on juvenile cases.

However, juvenile records sometimes appear on background checks for certain employers like law enforcement and health care agencies. If juvenile records are sealed, then no one can see it.

Have the client's juvenile records been automatically sealed?

If a client has successfully graduated from a rehabilitation program, has reached the age of 38, has been convicted of a marijuana-related offense that Proposition 64 reduced, or has convictions that were dismissed by the juvenile court after January 1, 2015, the juvenile record will automatically be sealed. Otherwise, the client may wish to petition that their juvenile records be sealed.

The client was a juvenile offender who received a deferred entry of judgment. If the client was a

juvenile who received a deferred entry of judgment pursuant to Cal. Welf. & Inst. C. §§ 790-791, and satisfied the terms of his deferred judgment, the charges will be dismissed. Any records in the possession of the juvenile court pertaining to that particular offense will be automatically sealed, except for the limited purpose of determining whether the minor is eligible for deferred entry of judgment for a subsequent offense. Cal. Welfl. & Inst. C. § 793(c).

The client's case was dismissed by the juvenile court after January 1, 2015. So long as the client was not found to have committed a violent offense listed under Cal. Welf. & Inst. C. § 707(b), the court will **automatically seal** the records pertaining to that particular offense. The court *must* dismiss the case if the client completed his probation successfully. If, however, probation was *not* successfully completed, the client will have to petition the court to seal his records.
See www.courts.ca.gov/28120.htm.

The client was a juvenile offender who either (a) graduated from a juvenile rehabilitation program, or (b) has reached the age of 38. The client's juvenile records have likely been sealed automatically. For an earlier sealing of juvenile records, see the next section.

The client's juvenile conviction was reduced to an infraction under Proposition 64. A client's juvenile conviction for a marijuana-related offense that Proposition 64 reduced to an infraction will be automatically sealed and destroyed two years after the date of the conviction or when he/she turns 18. See the Statutory Options for Reduction or Dismissal section of the manual for more information.

Can the client petition the court to seal his juvenile records?

To seal a Juvenile record, a client must meet the following 5 requirements:

- The client is **over 18 years old**, or it has been 5 years since the client's last arrest, or the client has completed their juvenile probation;
- The client **does not have any convictions as an adult for** a felony or a misdemeanor involving "**moral turpitude**" (meaning dishonest or immoral behavior such as theft, fraud, certain sex and drug offenses, and offenses causing significant bodily injury)
- The client's case **started and ended in juvenile court** (not in some other court, such as probate court or adult criminal court);
- The client can **demonstrate that they have been rehabilitated**; AND
- There is **no open civil lawsuit** based on the client's juvenile offense.

A client **cannot** get their Juvenile record sealed if they committed any of the following offenses and were 14 or older at the time:

- Murder, attempted murder, or voluntary manslaughter;
- Assault with a firearm, other weapons, or any means of force likely to produce great bodily injury;
- Rape, sodomy, or other sexual offenses, while using force, violence, or threat of great bodily harm;
- Using a firearm while committing a felony (or attempting a felony);
- Arson;
- Robbery;
- Various kidnapping offenses; or

- Any other serious or violent offense listed in California Welfare & Institutions Code section 707(b).

For a step by step process on how to seal a juvenile record, refer to the Client Checklist on How to Seal a Juvenile Record

Who cannot get their juvenile records sealed?

The client will not typically be able to seal their juvenile records if:

- the client was 14 years old or older, and committed a crime listed in the Welfare and Institutions Code §707(b);
- the client's record is for an adult conviction in a criminal court; or
- the client was convicted as an adult of an offense involving "moral turpitude" (which includes sex, drug crimes, murder or other violent crimes, forgery, welfare fraud, or other dishonest crimes).

If the client was 14 years old or older and committed a crime listed in Welfare and Institutions Code § 707(b), there may still be **case-specific ways to seal the record**. Advise the client to consult a criminal defense attorney.

Who can see sealed juvenile records?

The court may see juvenile records for 2 reasons:

- (1) if the client is a witness in a defamation case, or
- (2) to decide if the client qualifies for extended foster care benefits after turning 18.

In addition:

- The **federal government** may review sealed records if the client applies to the military or a job that requires security clearance.
- The **prosecutor** and others can look at juvenile records to determine if someone is eligible to participate in a deferred entry of judgment program.
- Car insurance companies can see your DMV records.

A client can also request to unseal the records in order to have access to them.

How long does it take to seal juvenile records?

If the cases occurred in only one county, the Probation Department has **90 days** to review the forms and let the court know if the client is eligible to have the files sealed.

If the client has cases from multiple counties, then the Probation Department has **180 days** to review the forms.

After the probation department reviews the forms, the court may either **make its determination** regarding sealing the records right away or **order a hearing**. The client will be notified of a hearing through mail and it may state "unopposed" which means the client does not need to attend, but it is recommended the client attend to answer any possible questions the judge may have.

II. Traffic Violations & Driver's Licenses

How can the client take care of their traffic tickets?

Parking Tickets: Send payment to parking agency listed on the ticket.

Infraction Tickets: The ticket will state whether to pay a fine or appear in court. If the client is paying a fine, the client should make payments to the court in the county where he/she received the ticket. The ticket will describe the information on how and where to send the payment. The client can request the court to consider the defendant's ability to pay using the Petition and Order for an Ability-to-Pay Determination Form and submitting supporting documentation.

If the client does not pay the fees associated with a traffic ticket, the interest and additional fees as penalties for paying late or not paying at all can **add up quickly** and make the total amount due exponentially higher. In addition, the client's **license can be suspended**, the client may be unable to renew their car registration, the client's credit report may be negatively impacted, and the client could be subject to **criminal charges**.

What are the client's options for OLD traffic tickets?

For PARKING tickets:
If the client can remember where he/she got the ticket, the client can contact the city where he/she got the ticket and ask how to resolve a parking ticket. If the client can't remember where he/she got the ticket, he/she can contact the DMV ask whether there are any holds on his/her car registration. The

DMV will be able to tell the client which county, city, or parking agency put the hold on the car registration.

Once the client knows where he/she owes outstanding parking tickets, he/she should contact the local parking authority directly to find out how much is owed and what to do next. If the ticket is old enough, it may have been sent to a collection agency. If this is the case, the client will need to contact the collection agency to find out how to pay the debt.

For INFRACTION and MISDEMEANOR tickets:
The easiest way to track down all old misdemeanor and infraction tickets is through the DMV. Go to the DMV and ask for a list of warrants, which should be available for free. The list of warrants will show all outstanding traffic tickets where the client failed to appear in court, failed to pay, and will show where he/she got the ticket. The client can also ask the DMV whether there are any holds on his/her driver license due to outstanding traffic tickets; they'll be able to tell the client which court put the hold on his/her license.

If the client has multiple tickets, it is important to pay off any tickets with registration holds first so that they can renew their registration.

What can the client do if they cannot pay the traffic ticket outright?

Set Arraignment/Trial Date: Ask the court (or collections agency if the ticket is in collections) for an arraignment date. At arraignment, the client can either plead no contest and the judge will likely reduce fines and give the client time to pay, or plead not guilty and set the case for trial. If the client pleads no contest, have him/her also petition the court to consider his/her ability to pay during sentencing using the Petition and Order for an Ability-to-Pay Determination Form and submitting supporting documentation.

If the client decides to go to trial, the government has the burden of proof, so if the officer does not appear, the client's case will be dismissed and the client will owe nothing. If the officer does appear, the client will have the option to change his or her plea and ask for a fine reduction, community service, or traffic school. The client should also ask the court to consider the client's ability to pay at sentencing using the Petition and Order for an Ability-to-Pay Determination Form and submitting supporting documentation.

Payment Plans: Ask the court or collections agency the client owes money to about setting up a payment or installment plan.

Amnesty Programs: Some counties have "amnesty" programs that allow the client to pay for all delinquent traffic debt for a fraction of the price. The client can contact the traffic court in the county where he/she owes money to find out whether it runs an amnesty program and whether he/she is eligible.

Specialty Courts: Some counties have special homeless courts, DUI courts, or other community courts that may be able to help resolve tickets and fines. The client can contact the local public defender in the

county where he/she got this ticket to ask if there are any community courts available and whether he/she is eligible.

When is traffic school an option?

In some cases, traffic school is an option that the client can take to make sure that the ticket does not show up on the client's driving record. Generally, the client can go to traffic school if:

- The client has a valid, regular (not commercial) driver license
- The ticket is for a moving violation that is an infraction (not a misdemeanor), and
- The client was driving a regular (non-commercial) vehicle when he/she got the ticket

The client may NOT be eligible for traffic school if:

- The client has a parking ticket or a misdemeanor ticket
- The ticket was for a serious moving violation, including speeding more than 25MPH over the speed limit
- The ticket was for a DUI or other drug/alcohol violation
- The client went to traffic school for a violation that occurred within 18 months of the current violation
- The client was driving a commercial vehicle when they got the ticket

If traffic school is an option, then it is a good idea to complete it. Traffic school allows clients to avoid adding “points” to their driving record, which can cause their insurance rate to increase and possibly result in suspension or revocation of your license. The client must still pay all of their traffic fines in addition to any traffic school enrollment fees.

What does it mean if the client's license was suspended?

A driver license suspension is a temporary loss of driving privileges; not forever. The period of time can range from 30 days to a few years. After the period of suspension has passed, your license is automatically reinstated.

A suspension is a penalty for some violation, conviction, or unpaid debt, such as:

- **Driving Violations:** Driving under the influence; hit and run; fleeing a law enforcement officer; driving without proof of car insurance; having too many accidents in a short time; having too many negative points on your driver record; or driving recklessly (road rage, speeding, etc.)
- **Other Violations:** truancy; vandalism (including graffiti); failing to appear in court; or failing to report an accident
- **Unpaid Debts**: failing to pay traffic ticket fines; failing to pay other court ordered fines; fees and restitution; failing to pay child support; or failing to pay other debts

If the client's license is suspended based on a physical or mental disorder, then the suspension will be permanent if that condition is permanent.

Restricted Licenses allow a client to drive during a period of suspension, but **only for specific purposes** that a judge has granted permission, such as to drive to work, school, or a court ordered program.

What does it mean if the client's license was revoked?

Revoked means **driving privileges are terminated**. The client may be able to get a Driver License again, but he/she likely will have to wait several years. In extreme cases, the client may be legally forbidden from over driving again. If the client become eligible for a Drivers License after it was revoked, then he/she will have to apply to for a new license.

Can the client get their driving privileges back?

The client may be able to get their license back if the specified time period of their suspension or revocation has passed, and the client has fulfilled any conditions of the suspension or revocation.

The requirements to reinstate will depend on exactly why the client's license was suspended or revoked. The client can call the DMV at 1-800-777-0133, ask them to look up the case, and find out what he or she needs to do. The client should have his/her license number ready as well as any information the DMV has sent them. The client should be ready to submit proof of fulfillment for any conditions that were imposed, such as certificates of completion for required courses or payment receipts for any fines.

If the client's driving privileges were suspended due to a **failure to appear**, the client may either pay the fine/enroll in an amnesty program if they qualify, or set an arraignment date with the collections agency. At arraignment, he/she can ask a judge for an **abstract** which will clear his or her license. The client can then set the case for trial or plead no contest at the arraignment.

A **civil assessment fee** is imposed against anyone who fails to appear or fails to pay a court ordered fine by the due date. If the client received a civil assessment fee notification from the court, the client may petition the court to reduce or vacate the civil assessment fee within **20 days** from the date on the notification using the Petition and Order to Reduce or Vacate Civil Assessment Form. Along with the petition, the client should include a declaration and supporting documents.

Examples of CA Requirements to Regain Driver's License After Suspension

Negligent Operator

- Pay a reissue fee to DMV
- Pay fines to the court

- File Proof of Financial Responsibility (California Insurance Proof Certificate: SR 22). This is a certificate proving that you have valid car insurance.
- Complete Negligent Operator probation, while staying free of traffic violations and avoidable accidents

Driving under the influence of alcohol and/or drugs (DUI)

- Install an interlock device on all vehicles he owns or operates for a minimum of five months.
- Complete mandatory suspension period, which means no matter how quickly you meet all other requirements below, you must wait a certain period before you can get your Driver License back.
- Pay a reissue fee to DMV.
- File Proof of Financial Responsibility (California Insurance Proof Certificate: SR 22). This is a certificate proving that you have valid car insurance.
- Complete a DUI Treatment Program; file Notice of Completion Certificate (Form DL 101).
- Pay fines to the court.

NOTE: If you meet some or all of these requirements before your mandatory suspension period ends, you might be able to get a restricted license.

Having a physical/mental condition or disorder

- Show that the condition no longer prevents you from driving safely by providing medical information and/or a satisfactory Driver Medical Evaluation (Form DS 326)

Being involved in a car accident and not having proof of car insurance (financial responsibility)

- Complete a mandatory 1-year suspension period
- Pay a reissue fee to DMV
- File proof of financial responsibility (California Insurance Proof Certificate: Form SR 22) proving that you have valid car insurance
- Failing to pay a traffic citation (FTP), or failing to appear in court on a traffic citation (FTA)
- Pay your citations or appear in court. The court will give you an FTP/FPA paper saying you fulfilled this requirement
- Pay a reissue fee to DMV

III. Criminal Defense

Many of the clients who face criminal law issues are unaware of and anxious about the criminal process. Although CLA-LA does not have the resources to provide on-going assistance, we can educate our clients of the legal process and refer them to a private defense attorney or public defender as needed.

A. Arrests and Charges

In California, an individual can be arrested if there is "probable cause" – the legal standard by which an officer of the law can obtain a warrant, conduct a personal or property search, or make an arrest. Cal Pen. C. § 836. Cal. Pen. C. § 836

Was the client arrested?

If yes, the arresting officer will have filed an arrest report that summarizes the events leading up to the arrest and anything the arrestee says or does after being placed in custody. Note, the police report can affect the charges entered and the bail amount required.

After the arrest, the suspect is booked and fingerprinted for an official record. The police arrest report is then sent to a prosecutorial agency, such as the District Attorney's Office (DA) or one of the various City Attorney's Offices, which decides which charges to file, if any.

If the prosecutor declines to file charges, the arrestee is released. If the prosecutor does file charges, the arrestee may be released without bail (on their own recognizance - "ROR"), released on bail, or held until their arraignment date.

For information about the status of the arrestee, charge, or bail amount,
visit https://inmatelocator.cdcr.ca.gov/Results.aspx
Inmate Lookup LASD

Is the client facing an arraignment?

An arraignment is the defendant's first court appearance, purposed to inform the defendant of the charged offense (s), to allow him to enter a plea, and to set the amount for bail. The arraignment usually takes place within 72 hours of the arrest.

It is generally recommended that the client be present for his arraignment except in exceptional circumstances. The client does not need to be present for the arraignment and can be represented by an attorney ***if:*** he was charged with a misdemeanor, AND if he and his defense counsel waived appearance, received a copy of the indictment, and pled "Not Guilty". Cal. Pen. C. § 977. However, there are exceptions and the defendant cannot be represented by an attorney for EVERY misdemeanor. The client may still be in custody at the time of the arraignment if bail has not been posted.

If the client misses his arraignment, the judge will likely issue a bench warrant for the client's arrest. The failure to appear will likely result in a higher bail amount. If the arraignment was scheduled at a courthouse located in Los Angeles County, the client should go directly to the court and ask to be a "Bench Warrant Walk In" and have his case heard right away. for felonies this will require same day court appearance. https://www.lacourt.org/division/criminal/criminal.aspx

If the client is unable to do so, advise him to contact the court immediately and schedule a new arraignment date. Further, the client should be prepared to give a valid reason for missing the first arraignment date.

Is the client facing a preliminary hearing or grand jury?

A preliminary hearing is a process designed to protect defendants from having to wait for trial when there is not enough evidence against them. The hearing is held in front of a judge who determines whether the evidence is sufficient for the defendant to stand trial. The defendant may question the evidence at the hearing. The hearing can be avoided through a plea bargain.

A grand jury is the process in which the prosecutor presents evidence to a panel of jurors to determine whether the defendant should stand trial. The grand jury does not need to be unanimous. If the grand jury indicts the defendant, he can still avoid trial through a plea bargain. Please inform clients that defense counsel is not permitted to be present during this process.

B. Bail

If the client decides to post bail, the amount will vary depending on the county and crime alleged. If the client attends all his court appearances, he will receive a full refund 60-90 days after the resolution of the case. If the client fails to appear, he will forfeit the money.

Los Angeles County Bail Schedule - https://www.lacourt.org/division/criminal/pdf/misd.pdf

Does the client need to post bail?

Has the judge released the client at his own recognizance (ROR)?
If yes, the client does not need to post bail but instead must promise to attend every scheduled court appearance and abide by other conditions required by the judge.

Has the judge denied the client the right to post bail?
It is rare for the judge to deny the client the right to post bail, but if he did, the client does not need to post bail and will remain in custody.

Can the client post a cash bail?

The client can post a cash bail by making a deposit to the arresting agency for the full amount required by the court. The client may pay in cash, traveler's check, money order, personal check, or cashier's check.

Does the client lack the finances to post a cash bail?

The client can utilize a **bail bond** if he lacks the financial ability to post a cash bail. Bail bond agents charge a non-refundable premium (set at a maximum of 10% in California). Some bond agents may require the client to offer something of value as collateral.

- Acceptable collateral: jewelry, vehicle, real property
- Unacceptable collateral: house or car that is not yet paid off, any item owned on credit

The California Supreme Court has made a recent ruling that bail cannot be set to an untenable amount unless there is clear and convincing evidence that the defendant will not appear. See *In re Humphrey*, 482 P.3d 1008, 1020, 1022 (Cal. 2021).

Is the client a cosigner for another's bail?

As a cosigner, the client promises to ensure that the defendant will attend all his court appearances. If the defendant fails to appear and the bond agent is unable to collect from the defendant, the client is responsible for repaying the bond agent.

Did the client fail to appear in court after bail was posted?

If the client, the defendant, fails to appear in court, he forfeits the full bail amount. Cal. Pen. C. § 1305(a). The cash bail will not be returned. If no cash bail was paid, the bond company will seek reimbursement from the defendant or the cosigner.

However, if the defendant appears within 180 days of the notice of bail forfeiture AND provides a satisfactory excuse as to his failure to appear, the court may vacate the bond. Cal. Pen. C. § 1305(c).

C. Defense Attorney Issues

The client can expect their defense attorney to help with the following:

- Advising the client on his or her rights, and explaining what to expect at different stages of the process;
- Ensuring the client's constitutional rights are not violated through law enforcement conduct, or in court proceedings;
- Negotiating a plea bargain with the government on the client's behalf;
- Investigating facts and evidence, cross-examining government witnesses, objecting to improper questions and evidence, and presenting any legal defenses.

Defense attorneys are typically far more knowledgeable about the law than defendants, and are almost always able to obtain better outcomes due to their familiarity with the legal system and legal procedures.

Defense attorneys can help the client understand their options and their likely outcomes and help negotiate lower charges or reduced fees/penalties. In addition, defense attorneys can help the client take advantage of any post-conviction relief that may be available (such as reducing felonies to misdemeanors, vacating or appealing a conviction, or petitioning for a dismissal). Clients that choose to represent themselves are at a significant disadvantage.

Does the client lack the financial ability to hire a defense attorney?

Public defenders and **"bar panel" attorneys** who are appointed by the court provide free legal representation for criminal defendants who are unable to afford a lawyer.

The right to an attorney guaranteed by the 6th amendment to the U.S. Constitution applies whenever the client **faces incarceration of 1 year or more (felony charge)**, or where the client is actually sentenced to imprisonment. Scott v. Illinois, 440 U.S. 367 (1979). In California, Public Defenders are charged with representing "any person who is not financially able to employ counsel and who is charged with the commission of **any contempt or offense triable in the superior courts at all stages of the proceedings**, including the preliminary examination." Cal. Gov. C. § 27706.

There is **no fixed income or assets threshold** for clients seeking to be represented by a Public Defender in California. Instead, the client may be asked to fill out a **financial statement** at the time of his/her arraignment. Cal. Gov. C. § 27707. The information provided will be used to determine whether the client can afford an attorney. Cal. Pen. C. § 987.8. Cal. Pen. C. § 987.8 and Cal. Pen. C. § 987.5

repealed by AB 1869 as of July 1, 2021. AB 1869. Every person who is assigned a public defender will be asked to pay a **$50 registration fee**, but they will not be denied representation if they are unable to pay. Cal. Pen. C. § 987.5.

Does the client think his attorney's fees are unreasonable?

Determine if the client has a signed contract with an attorney. If there is a signed contract, determine if there have been any errors or additional charges. Encourage the client to communicate with his attorney. The attorney may have made a mistake on the bill, or in certain situations, the case may have been more complicated and more time-consuming than it first appeared.

Typical Attorney Fees for Criminal Defense: (*excludes filing fees)

- Expungements $500 - $1000
- Traffic Tickets $500 per ticket
- Pre-trial/Plea $1000 - $5000
- Jury Trial $5000 - $100,000+

If the client has attempted to communicate, but the attorney was unwilling to negotiate, the client may seek fee arbitration. To request fee arbitration, the client can contact the local county bar association in the county in which the attorney's office is located.

See link for information regarding Los Angeles County Bar Association fee arbitration. LA County Fee Arbitration.

Does the client have trouble contacting his attorney?

If the client is distressed that his attorney is unresponsive, there are several options the client can pursue. First, the client should call and/or email their attorney. If the attorney does not respond within a reasonable time, the client should prepare a letter to the attorney. Make a copy of the letter and mail it with a return receipt requested, since both receipt and letter can be used as evidence for future State Bar purposes. If the attorney is still unresponsive, contact the State Bar of California to report the attorney's conduct - (800) 843-9053.

4. EMPLOYMENT

Clients who come to CLA-LA may have questions arising under labor laws (wage and hour, workers' comp, etc.) and other fair employment laws (discrimination, harassment, retaliation). **Labor laws**, such as wage and hour issues or workers' compensation, are handled by the Labor Commissioner's Office. Questions regarding **fair employment laws**, such as discrimination, harassment, or retaliation, are handled by the Department of Fair Employment and Housing and/or the U.S. Equal Employment Opportunity Commission (EEOC).

Clients with employment law disputes have several options for obtaining legal assistance. Clients with strong evidence of violations of labor and/or employment laws can retain **private legal counsel on a contingency basis**. If we see clients who fit this category, we recommend referring the clients out in most cases. However, clients should understand that based on the specific claims that they raise, their attorneys may need to file a complaint or charge with the appropriate government agency before proceeding further on their case.

Most often, clients with employment law disputes need guidance in understanding their legal rights as employees and assessing the likelihood and merit of any possible claims or remedies. However, it is important to consider and take into account the clients' need to keep their jobs where possible, rather than jump into litigation against their employers (past or present), which can cost them a lot of time and money with a very uncertain outcome. **Volunteers should acknowledge the difficulty of the client's situation but also explain the limits of labor or employment law to provide meaningful relief or restitution.**

Please be aware that if the client is an **"independent contractor"** rather than an "employee" the majority of the Labor Code (and this section) will not apply. However, an "independent contractor" is still protected against harassment under the FEHA (Cal. Gov't. Code 12940(j)(1)). In addition, even though an employer labels an individual as an "independent contractor", the individual may in fact be a bona fide employee based on the specific facts of their employment conditions. Thus, a label alone is insufficient to automatically rule out a person's rights under the Labor Code and other employment laws.

CONTENTS

I. Hiring

A client's **criminal history will likely be a much more significant factor** if he/she is applying to the police force or a position that includes use of **firearms**; seeking a job that requires state or local **licenses**; attempting to get a job that involves handling **medication**; or considering a position that involves **caring for the young, sick, elderly**, or any other vulnerable population. Advise them that they may eventually need to **consider other options**.

A. Applications and Interviews

What can a prospective employer ask in an application or interview?

Employers are prohibited by the **California Fair Employment and Housing Act (FEHA)** from asking questions in the interview (or at any stage of the hiring process) that would promote discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

Employers ***cannot*** ask about the **nature or severity** of a mental or physical disability or medical condition. An employer *may* ask about an applicant's ability to perform job-related functions.

For more information about what employers may and may not ask, see the California **Fact Sheet on Employment Inquiries** and other publications from the DFEH.

What can the employer ask about the client's criminal history?

The amount of information that an employer can see about a client's criminal history depends on the type of employer, whether any state or local license is required, and the type of conviction(s) that the client has. See below for some general guidelines:

Type of Record	Private Employer*	Public Employer* (except law enforcement)	Federal Employer*
Arrest	Only if pending trial	Only if pending trial, or applying for work which directly corresponds to type of charge (e.g. applying for pharmacy job, drug charge arrest).	Can always ask, usually not on initial application
Juvenile Records	Can always ask if not sealed	Can always ask if not sealed	Can always ask, usually not on initial application
Marijuana Conviction	Only prior 2 years. Ca. Lab. C. § 432.8	Not on initial application; can ask later, in interview. Ca. Lab. C. § 432.9	Can always ask, usually not on initial application
Misdemeanor Conviction	Can always ask	Not on initial application; can ask later, in interview. Ca. Lab. C. § 432.9	Can always ask, usually not on initial application
Felony Conviction	Can always ask	Not on initial application; can ask later, in interview. Ca. Lab. C. § 432.9	Can ask, but usually does not on initial application
Sealed, dismissed, expunged, or statutorily eradicated conviction	Can never ask; if discovered by reviewing public records, prohibited from using in consideration. Ca. Lab. C. § 432.7	Can never ask & prohibited from using consideration. Ca. Lab. C. § 432.7, unless applying for public office, for licensure by any state or local agency, or for contract with the California State Lottery.	Unclear

**Exceptions to these rules may apply where the employer is required by law to obtain comprehensive criminal background information, or if the client is expected to handle firearms; have access to pharmaceuticals; or work with medical patients, children, the elderly, the disabled or other sensitive positions.*

For more information on the impact of a criminal record on federal employment or benefits, see the **Federal Hiring Policies Mythbuster** and other resources from the Justice Center Reentry Council.

What impact does a criminal record have on hiring decisions?

The EEOC has stated that--unless required by federal law or regulation--employers **should not automatically bar everyone with an arrest or conviction record from employment**, because this practice would likely limit the employment opportunities of certain racial or ethnic groups in an unjustifiable manner. Instead, any policy of exclusion based on criminal history must be **job-related** and **consistent with business necessity**.

To show that the screening policy is job-related and consistent with business necessity, it should be **targeted** at take into consideration *at least* **(1) the nature of the crime, (2) the time elapsed, and (3) the nature of the job**. (*Green v. Missouri Pacific Railroad*, 523 F.2d 1290, 1293 (8th Cir. 1975)) The employer should also provide an opportunity for **individualized assessment** for applicant excluded by the screen to find out if the exclusion ***as applied*** is job related and consistent with business necessity.

EEOC GUIDANCE ON CONSIDERATION OF CRIMINAL RECORDS

"A policy or practice requiring an automatic, across-the-board exclusion from all employment opportunities because of any criminal conduct is inconsistent with the Green factors because it does not focus on the dangers of particular crimes and the risks in particular positions. As the court recognized in Green, '[w]e cannot conceive of any business necessity that would automatically place every individual convicted of any offense, except a minor traffic offense, in the permanent ranks of the unemployed.'" **EEOC Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII**

If the criminal record reveals **prior actions** that create **specific, job-related risk** for the employer, the employee may be properly excluded from consideration for the position based on their criminal record. This is most common in positions with significant responsibility for money, jobs that include use of a firearm, or fields that care for or interact with vulnerable population groups. For more information, see **the EEOC's guidance on this issue**. This also applies to Federal employers **as directed by the Department of Labor**.

How can the client report inappropriate hiring practices?

The client can report the employer to **Equal Employment Opportunity Commission (EEOC)** or the **Department of Fair Employment and Housing (DFEH)**. See more information in the **Filing EEOC or DFEH Complaints** section.

B. Background Checks

How can employers find out about a prospective employee's background?

Employers routinely **ask applicants directly** about their history, including questions about their criminal background. In many situations, this is the most direct and easiest way to find out information about applicants. The client should be encouraged to tell the truth (since providing false information could get them fired--or worse--should the employer find out about it later). However, there are some questions which an employer may not ask; see the **A. Applications and Interviews** section for more information.

In addition, employers may obtain background checks from **consumer reporting agency**. In California, an agency that performs background or credit checks for employers must comply with both the Federal Credit Reporting Act (**FCRA**) and the California Investigative Consumer Reporting Agencies Act (**ICRAA**).

- Employers must notify the employee/applicant in writing. This cannot be part of an employment contract, it must be a separate document.
- Employers must offer the employee/applicant a copy of the background check report.
- If an employer wants to take "adverse action" (e.g. not hire an applicant or discipline/fire an employee) based on information in a background check report, the employer must:
    - notify the employee/applicant before taking the action;
    - give the employee/applicant a copy of the report; and
    - give the employee/applicant a chance to correct any errors in the report.

Finally, employers **may gather information themselves** by checking public records and speaking with the applicant's family, friends, and past employers. The employer still must comply with applicable provisions of the ICRAA (which requires notifying the applicant of the possibility of a background check and giving the applicant the option to receive copies of public records compiled by the employer), but they are not subject to the FRCA.

For more information, see the **Reentry Legal Clinic's California Employment Background Check Fact Sheet**.

What is on a background check report?

In general, a **background check** may include information from:

- Public court records;
- Non-sealed juvenile records;
- Police, correctional facility, and CDCR records;
- DMV driving records;
- Other public records (eviction records; tax records; property records; birth certificates; marriage and divorce records; etc.);
- Internet searches;
- Previous school and work history; and
- Information gathered from friends, neighbors, co-workers, or landlords.

An employer can only check an applicant's credit report if they are applying for:

- a managerial position,
- a law enforcement position,
- a position that affords regular access to bank or credit card account information,

- a position that affords access to confidential or proprietary information,
- a position that affords regular access during the workday to cash totaling at least $10,000, or
- other similar positions specified in the law. Ca. Lab. C. § 1024.5.

For more information, see information from the Privacy Rights Clearinghouse and the Reentry Legal Clinic.

What can the client do if there is incorrect or protected information on their background check report?

Reporting agencies may be in violation of the law if they:

- Report information that is not legally allowed to show up on the background check report
- Report inaccurate or out of date information, without first verifying that the information is correct and up to date beforehand
- Fail to report the final disposition of arrests or charges that did not result in a conviction
- Give a copy of the background report to someone who is not authorized to receive a copy – including an employer who has not complied with legal requirements of notice and permission
- Refuse to investigate or correct mistakes in the background check
- Refuse to give the client a copy of the report provided to their employer
- Refuse to let the client see the information that the background check company used to conduct their background check report
- Report information on someone who has a similar name

In California, ICRAA violations should be reported to the **Attorney General's Public Inquiry Unit**, (916) 322-3360 or Toll Free in California (800) 952-5225. To file a complaint about the **FCRA** or get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

CLIENT INSTRUCTIONS

Provide client with instructions on **How to Fix Background Check Errors**.

What can the client do if their background check is wrongfully used to deny employment?

Before the client pursues any action against an employer, they should consider whether the employer's decision was an impermissible use of background information. In many cases, denial of employment is based on other factors and an entirely legitimate exercise of business discretion. The client will need some evidence that the employer's decision was *based on an impermissible use of background information* and not simply because another applicant was better qualified. The client may be able to ask the employer directly about the reasons for denial of employment, though responsiveness to this type of inquiry will vary widely.

If the employer's actions or words indicate that the decision to deny employment was **based on the client's criminal record**, *it may still be* ***appropriate*** if the client's criminal record revealed actions that demonstrate job-related risks to the employer. See the **A. Applications and Interviews** section for more information.

However, if the employer is simply **screening out all applicants with criminal records**, they may be in violation of Title VII and the client should consider **filing an EEOC or DFEH complaint**.

C. Live Scan

Live Scan for Job or License Application

Many jobs and licenses require that you submit an official copy of your criminal record (Record of Arrests and Prosecutions, commonly referred to as the RAP sheet). In order for the DOJ to release your RAP sheet to an employer or background check company, you must submit your fingerprints, which are taken by a company called **Live Scan**. Live Scan has locations all over California with fees that vary from $15-$35. On top of paying a fee to Live Scan, the client must also pay a processing fee to the DOJ (See below for **fee waiver** information).

Steps for obtaining a Live Scan:

1. Fill out the Request for Live Scan Service Form BCIA 8016.
2. Locate a Live Scan Site. Here is a link for LA county locations: https://oag.ca.gov/fingerprints/locations?county=Los%20Angeles
3. Get fingerprinted at the Live Scan site and pay Live Scan fees.
4. Mail your Live Scan fingerprints, along with a $25 fee to: California Department of Justice: Record Review Unit, P.O. Box 903417, Sacramento, CA 94203-4170.

DOJ Fee Waivers are available on the CA DOJ website: http://www.lccr.com/wp-content/uploads/DOJ-RAP-Sheet-Fee-Waiver-Forms2014.pdf. The client should expect to wait up to 2 months for the record.

Live Scan for Record Review

Clients may also request a copy of their own RAP sheet through Live Scan using the same steps listed above, but they should use Request for Live Scan Service Form BCIA 8016RR. This is the best way to check for inaccurate information. Details about how to correct any mistakes that may appear on your record are included with the Live Scan results.

CLIENT INSTRUCTIONS

The **Live Scan Client Instructions** provide a detailed step by step process for the client to follow if they want to review their DOJ RAP sheet/criminal record. [/BOX]

II. Termination

When clients have been terminated from their jobs, they often feel scared, frustrated, and angry. It is very important to serve as a counselor under these circumstances – to acknowledge the clients' difficulties and worries and to guide them in making wise decisions to protect their future.

Future employers are able to discover legal actions that clients take against former employers. The client should be advised that there can be serious consequences when taking legal action.

A. Wrongful Termination

Was the client wrongfully terminated?

Virtually all states are **at-will** employment states. In other words, barring protection pursuant to a collective bargaining agreement or individual employment contract, **employers can fire employees without advance warning and without a reason**. Clients, too, may quit without advance warning. See Cal. Lab. C. § 2922.

Even if an employment agreement is at-will, it is **still illegal** for an employer to fire employees for:

1. **discrimination based on certain protected categories;**
2. **retaliation,** and
3. any reason that **violates public policy**. Cal. Gov. C. § 12940; Cal. Lab. C. § 98.6.

If a client was wrongfully terminated but able to quickly secure a new job with a similar or higher wage, they may have **strong *legal* claims** but **little or no *damages***. In this situation, advise the client that litigation is unlikely to be worth the time and expense. Even in situations where there is a stronger argument for larger damages, if a client does not have sufficient evidence to support his or her legal claims that the termination was a violation of the law, then litigation still may not be worth the time and expense.

How can the client pursue a wrongful termination claim?

If the client feels wronged but does not have a legal claim, acknowledge the client's pain and see if there is any **non-legal remedy** that may help (e.g., a neutral reference from the former employer to assist in the client's new job search). Even if there is a valid claim, the client should almost always be **referred to private counsel**, as wrongful termination claims can be incredibly difficult to prove. See below for basic information about the **agencies and offices** that enforce wrongful termination laws as well as applicable **statutes of limitation**.

Clients may have **limited time** to file a complaint with the appropriate agency or risk losing their ability to claim damages if the statute of limitations lapses. If this is the case, encourage them to **start the process** on their own and retain an attorney as soon as possible afterward.

The client may be able to file a discrimination or retaliation claim with the **U.S. Equal Employment Opportunity Commission (EEOC)** under Title VII or other federal laws or the **California Department of Fair Employment and Housing (DFEH)** under FEHA or other state laws. See **Filing EEOC or DFEH Complaints** for more information.

The **Department of Industrial Relations (DIR)** is a California state agency that enforces the **California Labor Code** provisions that prohibit discrimination and retaliation. Clients must generally **file a claim alleging discrimination and/or retaliation** with the DIR **within 6 months** from the date of the alleged discriminatory or retaliatory act, Cal. Lab. C. § 6317(2). For more information, visit the DIR website at http://www.dir.ca.gov/dlse/HowToFileRetaliationComplaint.htm.

At the **U.S. Department of Justice**, the **Office of Special Counsel** enforces the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which prohibits citizenship status and national origin discrimination. In addition, the **Employment Litigation Section** enforces the provisions of Title VII and federal laws against state and local government employers.

Did the client have a contract with the employer?

Although California is an at-will state, there are employees who **do not fall under the at-will laws due to the contractual nature of their employment**. When this is the case, the employer and employee must uphold the terms of the contract – failure to do so would result in a breach of contract.

There are **two forms of agreements, express or implied:**

- An ***express*** agreement is usually in a written contract.
- An ***implied*** agreement is often oral though there may be written elements. These agreements are very rare, but there may be an implied contract if there is an employee handbook or policy that outlines reasons for termination.

The client will need to have proof of an agreement or a copy of the written contract in order to evaluate his/her wrongful termination claim. **If the client does not have documentation with them**, inform them of the applicable law and help them consider the types of evidence that could support their contractual claim.

If there was a breach, there are two options:

- Immediately refer the client out to a private attorney or to another legal-aid organization.
- Help the client **prepare a demand letter** before referring him out. Preparing a demand letter should be considered very carefully because it could later be discovered as part of an investigation and/or trial, and could possibly be detrimental to the employee.

Written agreements: the statute of limitations is 4 years from the date of the breach. Cal. Civ. Proc. § 337.

Oral agreements: the statute of limitations is 2 years from the date of the breach. Cal. Civ. Proc. § 339.

Did the employer violate public policy when firing a worker?

It is **illegal to violate public policy** when firing a worker—that is, to fire for reasons that society recognizes as illegitimate grounds for termination.

Before a wrongful termination claim based on a violation of public policy will be allowed, most courts require that there be some **specific law setting out the policy**. State and federal laws have specified employment–related actions that clearly violate public policy, such as firing an employee for:

- Disclosing a company practice of refusing to pay employees their earned commissions and accrued vacation pay;
- Taking time off work to serve on a jury;
- Taking time off work to vote;
- Serving in the military or National Guard; or
- Notifying authorities about some wrongdoing harmful to the public (whistle-blowing).

Some states also protect employees from being fired for very specific reasons, like service as an election officer or volunteer firefighter. Some courts have also held that employers cannot fire an employee for taking advantage of a legal remedy, or exercising a legal right—such as firing a workers' compensation claim or reporting a violation of the Occupation Safety and Health Act (OSHA).

Did the employer's actions rise to the level of fraud?

In extreme cases, an employer's actions when firing a worker are so devious and wrong that they rise to the level of fraud. Fraud is commonly found in the recruiting process (where promises are made or broken) or in the final stages of employment (such as when an employee is induced to resign).

To prove that an employee's job loss was a result of fraud, the client must demonstrate each of the following:

- Their employer made a false representation;
- Someone in charge knew of the false representation

- Their employer intended to deceive them (or tried to induce them to rely on the representation);
- The client actually did rely on the representation; and
- The client was harmed in some way by their reliance on the representation.

The hardest part of proving fraud is showing that the employer acted badly *on purpose*, in an *intentional effort to deceive the client*. This requires good documentation of how, when, to whom, and by what means the false representations were made.

Did the employer make defamatory comments?

To prove that defamation was part of the employee's job loss, they must show that—in the process of terminating their employment or subsequently providing references—**their former employer made false and malicious statements about them that harmed their chances of finding a new job**.

To sue for defamation, the client must usually show that their former employer:

- Made a false statement about them;
- Made the statement with malice (knowing that it was false or with reckless disregard to its falsity);
- Told or wrote that statement to at least one other person; and
- Harmed the client in some way by communicating the statement—causing them to lose their job, or preventing a new employer from hiring them, for example.

To win a case of defamation, the client must prove that the hurtful words were more than petty gossip. **Defamation cannot be just someone's negative opinion, it must be false information that is presented as a fact.**

B. Wages Owed

An employee is entitled to all wages earned **immediately upon being fired**, or after quitting with at least 72-hour notice. If an employee quits without at least 72-hour notice to the employer, the employer has 72 hours to pay the employee's wages in full. Cal. Lab. C. §§ 201, 202, 227.3.

If the employee does not receive his wages at the proper time, the employee's wages will continue to accrue as a **"waiting time penalty"** until paid, for up to 30 days.
Cal. Lab. C. §§ 203, 203.1.

For "waiting time penalties," there is a **3 year** statute of limitations. Cal. Civ. Proc. § 338(a), Cal. Lab. C. § 203(b). If the client seeks "waiting time penalties" *and* back wages, the claim must be filed within **2 years for oral contracts, 4 years for written contracts, and 3 years for statutory liabilities**. Cal. Civ. Proc. §§ 339, 337, 338.

If client's unpaid wages are under $1,000 from a small business: Help the client draft a respectful demand letter to his employer. If the employer does not respond to the letter, the client may pursue mediation or a **small claims lawsuit**.

If client's unpaid wages are greater than $1,000 or from a large business: Refer the client out. If client already has a judgment in his favor, please refer to the Small Claims section on **Paying or Collecting a Judgment**.

C. Unemployment

Unemployment insurance is provided for employees who lose their jobs through no fault of their own. A former employee who qualifies for unemployment insurance will receive weekly checks. This system is designed to give partial wage replacement to unemployed workers while they actively seek employment.

Does the client qualify for unemployment insurance?

In order for the client to claim unemployment insurance, a client must:

- Have earned enough wages during the base period to establish a claim - www.edd.ca.gov/pdf_pub_ctr/de8714ab.pdf
- Be totally or partially unemployed
- Be unemployed through no fault of his own
- Be physically able to work
- Be available to work; be ready and willing to immediately accept work
- Be actively looking for work. - Cal. Unemp. Ins. C. § 1253
- Be approved for training before training benefits can be paid

Is the client seeking assistance applying for unemployment insurance?

If the client is seeking unemployment insurance, encourage him to handle this process on his own. Advise the client about the necessary information that must be gathered (www.edd.ca.gov/unemployment/Before_you_Start.htm), including:

- All names used while working and a social security number;
- Mailing and residential address and phone number;
- State issued driver's license or ID card number, if client has either;
- The last date the client worked for any employer;
- The last employer's information: name, address, and phone number;
- Information on all employers the client worked for during the 18 month-period prior to filing the claim;
- The name of the employer that the client worked for the longest within the last year and a half;
- The specific reason why the client is no longer working for his last employer;
- Whether the client is receiving or expects to receive any payments from a former employer;
- Whether the client is able to work and available to accept work; and
- Whether the client has a legal right to work in the United States.

Is the client seeking assistance with an appeal of a denial or reduction of unemployment insurance benefits?

REFER OUT

CLA-LA **does not provide ongoing representation** so we cannot assist the client with filing an urgent appeal. If the client does not know where to start with finding an attorney, they can contact the **Los Angeles County Bar Association referral service** at https://www.smartlaw.org.

If the client's application has been denied or payments reduced, then the client has **20 days after the decision to appeal**. www.edd.ca.gov/Unemployment/First_Level_Appeal.htm. After receiving a decision on the first appeal, the client has another 20 days to file a second appeal. www.edd.ca.gov/Unemployment/Second_Level_Appeal.htm.

D. Wage and Hour Issues

Wage and hour laws require employers to pay their employees a certain minimum wage and to reimburse them for any expenses incurred by them while performing their job duties. Please consider the following information when determining whether there was, or is, a potential violation of the wage and hour laws.

Do wage and hour laws apply to the client?

Employers may try to avoid the wage and hour laws in one of two ways. First, employers may categorize employees as independent contractors. However, even if the employer labels a worker as an independent contractor, an analysis of a variety of factors--such as whether the employer exerts a large amount of control over the worker--may determine that the worker is an employee and not an independent contractor. S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989), 48 Cal.3d 341.

Additionally, employees can be categorized as either exempt or non-exempt. Exempt employees are not covered by the wage and hour laws, but the exemption only applies if the employees are in management positions. Non-exempt employees are protected by the wage and hour laws. To determine whether an employee is exempt, visit www.calchamber.com/california-employment-law/Pages/exempt-nonexempt-employees.aspx?CID=942.

For violations of wage and hour laws, clients have 3 years from the date of the violation to file with the Labor Commissioner. Cal. Civ. Proc. § 338(a).

Was the client paid minimum wage?

Federal and state laws set minimum wage requirements for all employees. According to the California Fair Wage Act of 2016, the minimum wage is to be **$10.50** effective 7/1/2016. An employee's minimum wage **cannot be waived** by any agreement. Cal. Civ. C. § 3513.

Under LA City ordinance, employees at work should be able to **clearly see a notice** that states the current minimum wage and the employees' rights under the ordinance.

The California Fair Wage Act will continue to increase the minimum wage each year as follows: $12.00 on 7/1/2017; $13.25 on 7/1/2018; $14.25 on 7/1/2019; $15.00 on 7/1/2020; and remain $15.00 on 7/1/2021. The years following 2021, the California Department of Industrial Relation shall calculate the minimum wage to maintain employee purchasing power by increasing it by the rate of inflation (this does not mean minimum wage will decrease if inflation decreases). The new minimum wage will be announced on or before October 15 in 2021, and the years following.

Was the client paid overtime?

Generally, an employer must pay an employee at least 1.5 times his regular rate of pay for working more than 8 hours in any work-day or more than 40 hours in any work week. Cal. Lab. C. § 510. Overtime compensation cannot be waived by agreement. Cal. Lab. C. § 1194.

To avoid overtime, employers may ask their employees to work "off-the-clock." It is prohibited for an employee to perform work for an employer that is not being recorded or captured in time records. Cal. Lab. C. § 1174. An employer who exerts control over the employees conduct (e.g., forcing the employee to wait or take certain methods of transportation) may also be violating the off-the-clock rules of the California wage and hour laws and the federal Fair Labor Standards Act (FLSA).

If an employer is covered by the FLSA, it must pay overtime to all eligible employees unless they fit into an exception to the law. If the client fall into one of these exception categories, they are exempt from the federal overtime law, which means they are not entitled to overtime pay:

- Executive, administrative, and professional employees who are paid on a salary basis
- Independent contractors
- Volunteers
- Outside salespeople (employees who regularly work away from the business)
- Certain computer specialists (such as programmers and software engineers)
- Employees of seasonal amusement or recreational businesses
- Employees of organized camps, or religious or nonprofit educational conference centers that operate for fewer than 7 months a year
- Newspaper deliverers
- Seamen
- Employees who work on small farms
- Criminal investigators
- Casual domestic babysitters

Was the client given meal and rest breaks?

An employee is generally entitled to both meal and rest break periods. For example, in California, most employers must offer employees an unpaid 30 minute meal break after a work period of 5 hours. If the total work period of the day is no more than 6 hours, the employer and employee can waive the meal period by mutual consent. Cal. Lab. C. § 512(a).

A California employee is entitled to a paid 10 minute rest break every 4 hours. IWC Order No. 4-2001(12).

For meal or rest break violations, the employee is to be paid 1 hour of pay at his regular rate of compensation. If the employer fails to pay that additional 1 hour of pay, then the employee may file a wage claim with the Division of Labor Standards Enforcement. Cal. Lab. C. § 226.7.

Did the client receive paid or unpaid vacation time?

There is no legal requirement in California that an employer provides its employees with either paid or unpaid vacation time. However, if an employer does have an established policy to provide paid vacation, then certain restrictions are placed on the employer as to how it fulfills its obligation.

Under California law, earned vacation time is considered wages, and vacation time is earned as labor is performed. For example, if an employee is entitled to two weeks of vacation per year, after six months of work he or she will have earned five days of vacation. Vacation pay accrues as it is earned, and cannot be forfeited, even upon termination of employment, regardless of the reason for the termination.

Does the client have unreimbursed expenses?

Employees are entitled to be reimbursed by their employers for any business expenses incurred or expenditures made as a, "direct consequence of discharge of duties." Cal. Lab. C. § 2802.

If the client has a valid claim, we generally recommend first helping the client **prepare a demand letter** to the employer requesting payment of the unpaid wages or reimbursements.

If it seems like a letter would be ignored, then immediately **refer client to a private attorney**. Note, that employers are likely to ignore demand letters when:

- The employer owes substantial funds;
- The employer is a large company with little discretion in Human Resource matters.

III. Harassment

Federal (Title VII) laws and many state laws protect employees from harassment in the workplace. Both federal and state laws outline the remedies that an employee can take against his employer for harassment. While CLA-LA can **educate clients about the relevant processes**, we do not have the resources to investigate or assist with harassment cases on an ongoing basis.

Has the employer engaged in harassment prohibited by Title VII?

Under Title VII (the Federal Civil Rights Act), an employer may not subject employees to workplace harassment based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Harassment is unlawful when (1) enduring the offensive conduct is a condition of employment, OR (2) the conduct is so severe or pervasive that it creates a work environment reasonably considered intimidating, hostile, or abusive. www.eeoc.gov/laws/types/harassment.cfm.

For violations of Title VII, the client should **file a claim with the EEOC** within 180 days from the date of the alleged harassment or discrimination. The statute is extended to 300 days to provide the client with an option to pursue a state claim (FEHA) first. Civil Rights Act, Title VII § 2000e-5(e)(1).

Has the employer engaged in harassment prohibited by California's Fair Employment and Housing Act (FEHA)?

Under FEHA, an employer may not subject employees, applicants, unpaid interns or volunteers, or independent contractors to harassment based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, age (over 40), pregnancy, denial of medical and family care leave, or pregnancy disability leave. Cal. Gov. C. §§ 12940, 12945, 12945.2.

For violations of the FEHA, the client should **file a claim with the DFEH** within 1 year from the date of the alleged date of the discriminatory or retaliatory act. Cal. Gov. C. § 12960(d).

Does the client need help addressing harassment?

If the client has a valid claim, ask if the client has brought the issue up with their supervisor or HR department to put the employer on notice. If the client has not yet reported the harassment, advise the client to use the appropriate personnel channels informing his or her employer of the situation and asking the employer to take appropriate action. Advise the client to keep all copies of their correspondence with their employer in the event that they need to file a formal complaint with the DFEH.

We may potentially help the client prepare a demand letter. If it seems like a letter would be ignored, then immediately refer client to a private attorney. (Employers are more likely to ignore demand letters when the employer willfully violated the law and/or the employer is a large company with little discretion in Human Resource matters.)

REFER OUT

The threshold for conduct to be deemed harassment is fairly high, and thus it is often difficult to prove workplace harassment. If there is a valid claim, it could easily take years to litigate and is best handled through ongoing representation (not clinic work). s

IV. Unpaid Leave

Federal laws require that employers provide unpaid leave for certain employees. Many states, including California, offer similar protections for employees. These laws also provide remedies if the employer discriminates or retaliates against both male and female employees who utilize this time off.

Is the client entitled to unpaid leave under the federal Family Medical Leave Act (FMLA)?

Family Medical Leave Act (FMLA), 29 U.S.C. § 2601, entitles an employee to take up to 12 weeks of unpaid leave in a 12-month period; the 12-weeks of leave do not have to be continuous. 29 U.S.C. § 2612. FMLA leave only covers:

- Birth of a child and to care for the newborn within one year of birth
- Adoption or foster care of a child within one year of placement
- Employee's spouse, child, or parent with a serious health condition
- Employee's serious health condition that prevents employee from performing
- Employee's spouse, child, or parent is in the military and on "covered active duty."

See www.dol.gov/whd/fmla/ for more information.

If the reason the client requested a leave of absence for is not one of the listed reasons, he/she is not entitled to leave under the FMLA. Instead, please encourage the client to speak with his employer again and respectfully (1) explain the current situation requiring leave, and (2) request a reasonable leave.

Is the client entitled to unpaid leave under the California Family Rights Act (CFRA)?

The California Family Rights Act (CFRA), Cal. Gov. C. § 12945.2, entitles an employee to take up to 12 weeks of unpaid leave in a 12-month period, as long as the employee has worked for the employer for more than 1 year, and has worked at least 1,250 hours in the last year. The 12 weeks of leave do not have to be continuous. CRFA covers:

- Birth of a child for purposes of bonding
- Adoption or foster care
- Serious health condition of the employee's child, parent, or spouse
- Employee's own serious health condition

See https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/pdl-cfra-fmla-guide/ for more information.

If the reason the client requested a leave of absence for is not one of the listed reasons, he/she is not entitled to leave under CFRA. Instead, please encourage the client to speak with his employer again and respectfully (1) explain the current situation requiring leave, and (2) request a reasonable leave.

Does the client want to request leave for other reasons?

If the client needs to take unpaid leave that does not fit in these categories, the employer may be gracious enough to offer that leave if the client respectfully requests that leave. Talk through ways the client may ask for leave, including providing an explanation for and the reasonableness of the leave requested and working with the employer to find a solution addressing any reasonable concerns.

Was unpaid leave wrongfully denied?

If the client has a valid claim, we generally recommend first helping the client prepare a demand letter. If it seems likely that a letter would be ignored, or if the client has already written a letter to no avail, the client may want to pursue legal action. Please speak with the Executive Director about referring the client to a private attorney or refer the client to another legal-aid organization.

Was the client discriminated or retaliated against for his request?

For violations of FMLA, the client should file a claim with the Wage and Hour Division of the Department of Labor within 2 years of the alleged act. The statute is extended to 3 years if the violation was willful. 29 C.F.R. §§ 825.400(b), 825.401(b). For more information, see www.dol.gov/whd/regs/compliance/whdfs28.htm.

For violations of the CFRA, the client may **file a claim with the DFEH** within 1 year of the alleged discriminatory/retaliatory act. Cal. Gov. C. § 12960(d).

V. Workers' Compensation

Workers' Compensation benefits are designed to cover medical bills and treatments for injuries or illnesses sustained during or resulting from work, partially replace any lost wages during recovery, and aid in the employee's return to work. Every California employer using employee labor, including family members, must purchase Workers' Compensation Insurance. Cal. Lab. C. § 3700.

The client must report the injury to the employer **within 30 days** of learning or believing that it was caused by his work. Otherwise, the client may lose his right to receive Workers' Compensation benefits. www.dir.ca.gov/dwc/InjuredWorker.htm.

After the client reports the injury, the employer should provide the client with a **worker's compensation form** to fill out and return. The client can also obtain a claim form online at www.dir.ca.gov/dwc/InjuredWorker.htm.

The claim administrator **must authorize medical treatment limited to $10,000 within one working day after you file your claim**. This is even when the investigation is pending. Speak with your supervisor about the law that requires immediate medical treatment.

If the client needs assistance filing the claim, please speak to the Executive Director about referring the client to a **private attorney**. Most legal aid organizations do not take Workers' Compensation cases.

If the client has been injured as a result of or during employment, there are many attorneys available to help on an ongoing (**contingency**) basis if the claim is sufficiently large.

VI. Filing EEOC or DFEH Complaints

IMPORTANT: Federal employees and job applicants have a different complaint process with the Federal Sector EEO and should not follow the processes described below.

How can the client report improper employment practices?

The client can report the employer to either the **Equal Employment Opportunity Commission** (**EEOC**) or the **Department of Fair Employment and Housing** (**DFEH**). The EEOC is a federal civil rights agency that enforces federal civil rights law, and DFEH is the state civil rights agency that enforces California civil rights law.

Considering the following general rules when determining where file a complaint:

	EEOC	DFEH
How many employees work for the employer?	More than 15	More than 5
How long ago did the violation occur?	Less than 180 days	Less than 1 year
What type of civil rights violation occurred?	Violation of federal civil rights	Violation of California civil rights

Under Title VII and CA Law**, the client cannot go straight to court** – they must begin by filing a complaint with the EEOC or DFEH. If the client wants to sue right away, they can ask the EEOC for a **Right to Sue notice**. However, the EEOC is allowed **up to 180 days** to investigate the complaint before the Right to Sue notice is issued.

What kind of remedies can the client get?

There are two possible types of remedies for improper hiring practices:

- ***Compensatory Damages*** – repayment of out of pocket expenses caused by discrimination like continuing job search and emotional harm
- ***Punitive Damages*** – awarded to punish an employer who has committed an especially hateful or careless act of discrimination

In general, the remedies are similar between the EEOC and DFEH (see above). In some cases they may be slightly different. This is complicated and should be discussed with a lawyer or a representative from the EEOC or DFEH if this is a concern.

What is the EEOC complaint process?

First, the client should file a complaint by contacting the EEOC:

- **Call**: 1-800-669-4000 to give basic information about the situation, and then a local office will follow up about filing a complaint.
- **Mail**: The client can mail a written complaint to any local EEOC office.
    - Los Angeles EEOC Office: 255 East Temple St., 4th Floor, Los Angeles, CA 90012. Open M-F 8AM-4:30PM

After the complaint has been filed, the EEOC process typically includes these steps:

- Notifying the Employer – The EEOC has 10 days to send a notice and copy of the charge to the employer.
- Employer's Response – If case is not sent to mediation, or if mediation doesn't resolve the problem, then the EEOC will have the employer respond with a written answer, which will then be given to an EOC investigator

- Investigation – This may include visiting the employer, interviewing other employees or witnesses, and gathering documents.
- Decision – Once the investigation is completed, the EEOC will issue a decision. The decision will say either: NO CAUSE – meaning the EEOC did not find any evidence that the employer illegally discriminated against the client; or REASONABLE CAUSE – meaning the EEOC thinks the employer DID illegally discriminate.

Depending on the EEOC's decision, the client will have the following options:

- If the EEOC decides that there was **NO CAUSE** for the discrimination, the EEOC will send the client a Right to Sue notice, which allows them to file a lawsuit in court against the employer. The client has 90 days after receiving this notice to file a lawsuit.
- If the EEOC finds **REASONABLE CAUSE**, the EEOC will try to reach a voluntary settlement with the employer. Usually consists of trying to get the employer to compensate for the harm of the discrimination.
    - If the EEOC and the employer are unable to reach a settlement, then the EEOC may decide to file a lawsuit against the employer on the client's behalf.
    - If the EEOC fails to reach a settlement with the employer but decides not to file a lawsuit, the EEOC will give the client the Right to Sue notice, allowing the client to bring a suit within 90 days of receiving the notice.

What is the DFEH complaint process?

First, the client should file a complaint by contacting the DFEH:

- **Call**: (800) 884-1684 to report the discrimination and file a Pre-Complaint Inquiry.
- **Mail**: Fill out a Pre-Complaint Inquiry form and mail to any local DFEH office.
- Los Angeles Office: 320 West 4th Street, 10th Floor, Los Angeles, CA 90013
- **Online**: DFEH portal found here - https://www.dfeh.ca.gov/complaint-process/complaint-forms/.
    - The client will have to create an account for the online process.
    - Alternatively, the client can **email** the Pre-Complaint Inquiry form to contact.center@dfeh.ca.gov.

After the complaint has been filed, the process typically includes these steps:

- **Employer's Response** – the DFEH will give a copy of the complaint to the employer.
- **Investigation** – may include interviews with people and document gathering; DFEH must complete its investigation within one year from the date the client filed their complaint.
- **Decision** – if the investigation shows the employer DID violate the law, the DFEH will try to resolve the complaint through conciliation; if the investigation shoes the employer did not violate the law, then the DFEH will close the case and give the client a right to sue notice.
- **Conciliation** – DFEH will attempt to resolve the complaint by reaching a voluntary settlement agreement with the employer.
- ***Possible Litigation*** - If the DFEH cannot reach an agreement with the employer, it may decide to file a lawsuit against the employer on the client's behalf, otherwise it will give the client a Right to Sue notice that allows them to file a lawsuit on their own.

5. IMMIGRATION

Current U.S. immigration policy seeks to promote family reunification, allow for the admission of skilled workers, and provide a sanctuary for victims of persecution and crime. Because immigration law is complex, many clients seek legal counsel. Clients who are undocumented immigrants are particularly vulnerable, often living in fear because of physical, emotional, and sexual abuse.

This checklist will help volunteer attorneys identify what resources are available to help our clients navigate basic immigration issues. For complex matters (e.g., deportation and asylum), CLA-LA will refer clients to other legal aid organizations or to private attorneys.

This chapter lists which forms the clients will need to address certain issues, but please know that supporting materials (i.e., entry records, name change records, and medical examinations) may also be required but not expressly noted. Visit the U.S. Citizenship and Immigration Services (USCIS) website for more detailed instructions.

CONTENTS

I. Admissibility and Preliminary Considerations

Is the client admissible to the U.S.?

Note: Admissibility must be determined before proceeding with issues relating to the following 3 topics: (1) admission to the U.S., (2) change of nonimmigrant status, or (3) adjustment of nonimmigrant status to permanent resident status.

In order to be admissible (i.e. gain lawful entry) to the U.S., a non-citizen must meet all of the requirements and eligibility criteria for one of the immigrant preference categories or nonimmigrant visa classifications. The individual must *also* demonstrate that he/she is **not inadmissible under INA § 212(a)**.

The most commonly applied grounds of inadmissibility are set forth below:

- Crimes of Moral Turpitude;
- Multiple Crimes Committed;
- Immigration Fraud;
- Prior Removal / Deportation;
- Unlawful presence/Visa Overstays;
- Likelihood of Becoming a Public Charge;
- Communicable Disease of Public Significance; and
- Terrorism.

See INA § 212(a) for a full list of issues affecting admissibility. If the client committed certain crimes, immigration fraud, or was previously deported, please speak with the Executive Director to refer the client to an immigration attorney, who can determine if there is basis for a waiver of inadmissibility. INA § 212(a).

Has the client or his family served in the U.S. military?

The United States Citizenship and Immigration Services (USCIS) provides special rules and exceptions for former or current members of the military and families of the military, and survivor benefits for relatives of non-U.S. and U.S. citizen military members.

Is client aware of the costs associated with immigration matters?

Warn the client that immigration forms are often complicated, time-consuming and can be very expensive. Further, not all forms qualify for a Fee Waiver, so it is important to ask the client if he has the financial support needed to file the forms that do not qualify (i.e., many clients looking to apply for a green card or petition for alien relative).

Has the client brought the necessary documents?

Explain to the client if the client has not brought substantial documentation or organized documents, it is unlikely CLA-LA will be able to help the client complete the forms. If the client needs help obtaining government documents, they may need to submit a Freedom of Information Act (FOIA) Request.

A. Waivers of Inadmissibility

When a client has been barred from admission, he may be eligible for a Waiver of Ground of Inadmissibility (I-601) for **extreme hardship**. These waivers are too complicated to complete at the clinic, and CLA-LA does not have the needed resources. Please speak with the Executive Director about referring the client to an immigration expert.

What is extreme hardship?

If the person facing deportation has a U.S. citizen or LPR child or spouse, this child or spouse is termed the "qualified relative." If the deportation of the parent or spouse will cause *the qualified relative* to suffer extreme hardship, the government will take that fact into account. The factors considered are:

1. the age of the alien, both at time of entry to the U.S. and at time of application for suspension of deportation;
2. the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in another country;
3. any significant health condition, particularly when suitable medical care might not be available in the country of removal;
4. the alien's ability to obtain employment in the country of removal;
5. the length of residence in the U.S.;
6. the existence of other family members who will be legally residing in the U.S.;
7. the financial impact of the alien's departure or removal;
8. the potential negative impact on the qualifying relative's education opportunities;
9. the psychological impact of the alien's deportation or removal;
10. the current political and economic conditions in the country of removal;
11. family and other ties to the country of removal;
12. contributions to and ties to a community in the U.S., including the degree of integration into society;
13. immigration history, including authorized residence in the U.S.; and
14. the availability of other means of adjusting to permanent resident status.

Ultimately, "extreme hardship" must be evaluated on a case-by-case basis after a review of all the circumstances. Remember: there must be extreme hardship *for the U.S. citizen or Lawful Permanent Resident* if the individual is deported.

Are there waivers for criminal records?

Waivers will not be granted for aggravated felonies or persons who have been LPRs for less than 7 years. See INA § 212(h).

CLA-LA does not have the resources to provide ongoing representation at this time. Please speak to the Executive Director about referring a client with a criminal record to an immigration attorney, who can better determine eligibility and assist in the application process.

B. Military Members and Families

Is the client a member of the U.S. armed forces?

Members of the U.S. armed forces may be eligible for citizenship by qualifying for naturalization through military service. INA §§ 328; 329. Service members should file their applications in accordance with the instructions for the Application for Naturalization (N-400) and a Request for Certification of Military or Naval Service (N-426). Visit www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartI-Chapter5.html for further instructions.

To see if the client qualifies for either naturalization through qualifying service during “peacetime’ or naturalization through qualifying service during “period of hostilities,” visit www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-military-members.

Is the client the spouse or child of a U.S. citizen, military member?

Spouses of U.S. citizen members of the U.S. armed forces who are or will be deployed, may be eligible for expedited naturalization. INA § 319(b). Children of U.S. citizen members of the U.S. armed forces may be eligible for overseas naturalization. INA § 322. Overseas naturalization allows certain eligible children of service members to become naturalized U.S. citizens without having to travel to the U.S. for any portion of the naturalization process.

For more information about the general conditions required for expedited or overseas naturalization, please visit www.uscis.gov/military/citizenship-military-personnel-family-members/citizenship-spouses-and-children-military-members.

Is the client a surviving spouse or surviving child of a deceased military member?

If the deceased was a non-U.S. citizen service member, determine whether the surviving spouse, child or parent applied for adjustment of status based on his relationship to the service member prior to the service member's death. If the application was filed prior to the service member's death, the application may be adjudicated as if the death did not occur. For more information, see www.uscis.gov/military/family-based-survivor-benefits/survivor-benefits-relatives-non-us-citizen-military-members.

If the deceased was a U.S. citizen, then the surviving spouse or child may be eligible for immigration benefits as an "immediate relative." Further, the surviving spouse or child may be eligible for naturalization under INA § 319. For more information, see www.uscis.gov/military/family-based-survivor-benefits/survivor-benefits-relatives-us-citizen-military-members.

Does the client seek additional resources as a member or family member of military personnel?

The client may call the USCIS toll-free military help line at (877) CIS-4MIL or (877) 247-4645. Customer service specialists are available from Monday through Friday from 8:00 am to 4:30 pm CST. The client may also refer to www.calvet.ca.gov.

C. Fee Waivers

What filings qualify for a Fee Waiver?

USCIS will consider a Request for a Fee Waiver (I-912) for applications and petitions including, but not limited to, the following:

- Biometrics Services;
  - All biometrics services fees can be waived if the appropriate requirements are met and Form I-912 is completed, except for those filings of I-765, under DACA.
  - Applicants of 75 years of age or older are not charged a biometric fee for an Application for Naturalization (N-400).
  - No fee is required for military applicants filing under INA §§ 328 or 329.
- Application to Replace Permanent Resident Card (I-90);
- Petition to Remove the Conditions on Residence (I-751);
- Application to Register Permanent Residence or Adjust Status (I-485);
  - The Fee Waiver applies ONLY if the client is filing for asylee, refugee, VAWA, SIJS, a T-Visa, or a U-Visa.
- Application to Extend/Change Nonimmigrant Status (I-539);
- Application for Naturalization (N-400); and
- Application for Certificate of Citizenship (N-600).

For a complete list of filings that qualify for a Fee Waiver, please see www.uscis.gov/sites/default/files/files/form/i-912instr.pdf.

Is the client financially eligible?

The client's income must be at or below 150% of the Federal Poverty Guidelines. These guidelines change every year. Go to www.uscis.gov/i-912p for the most current poverty guidelines.

2016 Federal Poverty Guidelines:

Household Size	150% of HHS Poverty Guidelines
1	$17,820
2	$24,030
3	$30,240
4	$36,450
5	$42,660
6	$48,870
7	$55,095
8	$61,335
+1	Add $6,240 for each additional person

The client must provide supplemental evidence to support his income.
See https://www.uscis.gov/sites/default/files/files/form/i-912p.pdf.

Does the client seek help with requesting a Fee Waiver (I-912)?

If the client is eligible and the Fee Waiver is applicable, please assist the client with completing as much of Form I-912 as possible. For more detailed instructions, see www.uscis.gov/sites/default/files/files/form/i-912instr.pdf.

Each Form I-912 will be considered on its own merits, and should be filed with any relevant supplemental evidence that the client has. Do not file Form I-912 without an application or petition requesting an immigration benefit! Form I-912 must be filed together with the relevant application(s) or petition(s) or it will not be considered!

If the client is filing Form I-912 with his application or petition, he should NOT pay the filing fee! If the client submits Form 1-912 along with the filing fee, the fee will be used to process the application or petition, and Form I-912 will be discarded.

To submit a request for a fee waiver, the client should be advised to:

- Include a copy of his most recent Federal Income Tax Return;

- Prepare and print a cover letter; and
- File the request by mailing the relevant application(s) or petition(s), the completed Form I-912 and a copy of tax return, and all supporting documents to the same address.
    - *Look to the application(s) or petition(s) instructions to determine where the forms should be mailed.*

The client will receive a decision regarding the Fee Waiver Request by mail.

D. Obtaining Documents

Clients may obtain their records through Freedom of Information Act (FOIA) requests. FOIA is designed to create transparency and make government information freely available to the public. See 5 U.S.C. § 552. To obtain information about individual immigration issues, such as when and why someone was deported, the client should submit a FOIA request to the National Records Center.

Has the client submitted a FOIA request?

If the client has already submitted a FOIA request, and has received a denial, either in whole or in part, the client can file an appeal to the Office of Immigration and Privacy, Department of Justice at www.justice.gov/oip, pursuant to the rules of 28 C.F.R. § 16.9.

If the client has not yet submitted a FOIA request, please help the client complete and submit a **Freedom of Information Act/Privacy Act Request (G-639)**. Visit http://www.uscis.gov/g-639 for more detailed instructions. *Please note: instructions on how to complete Form G-639 differ for each region and type of applicant.*

- Determine whether the client should submit a "*broad*" (all documents) or "*narrow*" request (specifically listing one document) in order to speed up processing time.
- Instruct the client to submit Form G-639 by mail, fax, or email.
    - If by mail: National Records Center (NRC) FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010
    - If by fax: (816) 350-5785
    - If by email: uscis.foia@uscis.dhs.gov.

The client should NOT send any money with this request! There is no initial fee for filing the request, but once the request is processed the USCIS may charge for document processing.

Has the client submitted a Social Security Administration (SSA) FOIA request?

To make a Social Security Administration FOIA request, the client should visit the SSA website at www.socialsecurity.gov/foia/request.html.

II. Unlawful Entrants

If a client entered the United States **without a visa or using fraudulent papers**, he or she is considered **undocumented** and there are **very limited options** for obtaining legal status. For most clients who are not documented, another person must **petition** for them to receive permanent legal status (e.g., a family member or employer).

Deferred Action for Childhood Arrival (DACA)

The Trump Administration recently terminated the DACA program. DACA issuances and work permits **expiring before March 5, 2018** must be submitted for renewal **by October 5, 2017.** Existing work permits remain valid until their expiration date. For more information, see http://weareheretostay.org/resources/daca-update-five-things-you-should-know/.

Does the client have a family member to petition for him to become a lawful permanent resident?

See sections discussing lawful permanent residency, petitions by a U.S. Citizen family member, and petitions by a family member who is a lawful permanent resident.

Can the client's employer petition for him to obtain permanent residency?

This is a very rare occurrence and unlikely to come up at a clinic. For an employer to petition for the client, the immigrant must be a person of "**extraordinary abilities**" and the job opening must be one that **cannot be filled by an American citizen** (i.e., people with advanced degrees in a specialized field like Albert Einstein). INA § 203(b).

Please advise the client that this is an **unusual** petition. Should the client pursue this avenue, the client should encourage the employer to retain counsel to file an *Immigration Petition for Alien Worker* (Form I-140).

Can the client's employer petition for a temporary work visa?

If the client is a **temporary worker** (i.e., needed for a year or less and fills a seasonal position), the client's employer may petition and sponsor the client. Agricultural workers might be eligible for H-2A visas, and non-agricultural workers might be eligible for H-2B visas. See INA §§ 214(c); 218. Please visit www.foreignlaborcert.doleta.gov for additional information.

To obtain a temporary work visa, **the client's employer** must file the following documents before filing a **Petition for Nonimmigrant Worker (I-129)** with the U.S. Citizenship and Immigration Services (USCIS).

For H-2A Visas (Temporary Agricultural Workers) – The client's employer must file:

- A Foreign Labor Certification (ETA-790) with the local State Workforce Agency (SWA); and
- A Temporary Employment Certification (ETA-9142A) with the Chicago National Processing Center (NPC). INA § 101(H)(ii)(b).

For more information, see https://www.uscis.gov/working-united-states/temporary-workers/h-2a-temporary-agricultural-workers.

For H-2B Visas (Temporary Non-Agricultural Workers) – The client's employer must file:

- An Application for Prevailing Wage Determination (ETA-9141) with the National Prevailing Wage Center;
- A Foreign Labor Certification (ETA-790) with the local SWA; and
- A Temporary Employment Certification (ETA-9142B) with the Chicago NPC.

For more information, see https://www.uscis.gov/working-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers. Advise the client that this is a long process, and the client should work with his employer directly to obtain this visa. Finally, advise the client that the quota for H-2B visas is very low and fills up quickly. INA § 214(g)(1)(B).

Are there any special circumstances that may enable the client to obtain protection in the U.S.?

If there is no one to petition for the client, the client may obtain legal status in **very limited** circumstances. Please check the section discussing the special circumstances under which our most vulnerable clients (e.g., victims of human trafficking) may have access to a visa. The legislature has determined that these individuals should be protected because they themselves victims of some illegal or immoral conduct. Individuals who fit in these categories include victims of **trafficking**, **persecution**, and **domestic violence**.

For more information, visit the manual section covering **special circumstances visas.**

III. Lawful Entrants

Legal entry to the U.S. requires a **visa**, which is a passport stamp or certificate that states the purpose of the visit and for how long the visitor is allowed to stay. Some visas may be **extended prior to their expiration,** or in highly unusual situations may be renewed after they expire.

When someone stays longer than their visa allows, he becomes **undocumented**.

A. Green Card Issues

Does the client currently have a green card?

If not, the client will need to have a U.S. family member or employer submit a petition for them. Generally, in order to be eligible to become permanent resident; the client must have:

- Entered legally;
- Maintained current legal status; and
- Not worked without authorization, and not entered the U.S. on a visa waiver. INA § 245.

If the client fulfills the requirements, determine whether there is an appropriate family member who can petition for them to become **lawful permanent residents**. (Employers occasionally can petition as well.)

In rare circumstances, the client may qualify for a **special circumstances visa**. These visas may be available even if the client has entered illegally or failed to maintain legal status.

Does the client want to renew or replace a green card?

Please help the client fill out an *Application to Replace Permanent Resident Card* (Form I-90). In addition, determine whether the client is eligible for a **Fee Waiver**. The client may complete and submit the application either online or by mail. See www.uscis.gov/i-90.

Does the client want to remove restrictions on a green card?

If the client was an "**alien spouse**" or "**alien son or daughter**" as defined in INA § 216(h), at the time the client obtained the status of an alien lawfully admitted for permanent residence, such status will have been granted **on a conditional basis**. See INA § 216(a). There may have also been conditions placed on the client's status as an alien lawfully admitted for permanent residence if the client entered the U.S. through **entrepreneurship**. INA § 216A(a).

In the situations mentioned above, the client receives **a valid green card for 2 years** but must file a petition to remove the condition(s) **during the 90 days before the card expires**. INA § 216(d)(2)(A).

If the client is **ready to petition for removal of green card conditions**, please determine whether the client is eligible for a **Fee Waiver.**

- If the client is seeking to remove conditions on a green card **based on marriage**, please help him fill out a *Petition to Remove Conditions on Residence* (Form I-751). For detailed instructions on how to complete and where to file Form I-751, visit www.uscis.gov/i-751.
- If the client is seeking to remove conditions on a green card for **entrepreneurs**, please help him fill out a *Petition by Entrepreneur to Remove Conditions* (Form I-829). For detailed instructions on how to complete and where to file Form I-829, visit www.uscis.gov/i-829.

B. Visa Extension

Does the client's current visa allow for extension?

The client MAY NOT APPLY for an extension if he entered the U.S. via one of the following:

- A visa waiver program (WT or WB Visa);
- While in transit through the U.S. (C Visa);
- While in transit without a visa (TWOV Visa);
- As a crewman (D Visa);
- As the fiancé of a U.S. citizen or dependent of a fiancé (K-1 or K-2 Visa); or
- As an informant or witness on terrorism or organized crime (S Visa).

INA § 245(c)-(d). For more information,
see www.uscis.gov/sites/default/files/USCIS/Resources/C1en.pdf.

Is the client eligible to apply for an extension?

The client is eligible for an extension if all of the following are met:

1. Client was lawfully admitted into the U.S. with a nonimmigrant visa;
2. The client's nonimmigrant status remains valid;
3. The client has not committed any crimes;
4. The client has not violated the conditions of his admission; and
5. The client's passport is, and will be, valid for the duration of his stay.

If the client is eligible for an extension, help the client fill out an *Application to Extend/Change Nonimmigrant Status* (Form I-539). See www.uscis.gov/i-539. Also, please determine whether the client is eligible for a **Fee Waiver**.

The client must then file the form with USCIS. He may do so by filing online at www.uscis.gov or by mail. The address to which the client will need to send Form I-539 will depend on the type of visa he has and can be found at www.uscis.gov/i-539-addresses.

C. Lawful Permanent Residency

A **Lawful Permanent Resident (LPR)** is defined by USCIS as "[a]ny person not a citizen of the United States who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as 'Permanent Resident Alien,' 'Resident Alien Permit Holder,' and 'Green Card Holder.'" www.uscis.gov/tools/glossary/lawful-permanent-resident-lpr.

Unless the client has been the victim of trafficking or crime, **the client cannot apply to obtain LPR status on his own**. Therefore, the client must first find a **sponsor**, someone (i.e. a U.S. Citizen or Lawful Permanent Resident family member) who can **petition on the client's behalf**.
Visit www.uscis.gov/sites/default/files/USCIS/Resources/A1en.pdf for more information.

Generally, in order to become a lawful permanent resident, the client must have:

- Entered legally;
- Maintained current legal status; and
- Not worked without authorization, and
- Not entered the U.S. on a visa waiver. INA § 245.

i. Petition by U.S. Citizen Family Member

U.S. Citizens may petition for their family members to be granted visas, but the process will vary dramatically depending on whether the family member is an "immediate relative" or not.

"Immediate relatives" are spouses, unmarried children under the age of 21, and parents of U.S. citizen sponsors over the age of 21. INA § 201(B)(2)(a). If the relationship between client and relative is that of an immediate relative, **a visa may be available immediately**.

If the family member is **not an immediate relative,** they can still be the subject of a petition by the U.S. Citizen but will likely have a **long wait** before a visa becomes available. INA

Immediate Relative

Is the petitioner an immediate relative of the prospective immigrant?

"Immediate relatives" are spouses, unmarried children under the age of 21, and parents of U.S. citizen sponsors over the age of 21. INA § 201(B)(2)(a). If the relationship between client and relative is that of an immediate relative, the worldwide level of immigration, INA § 201, will not apply.

In order to petition for an immediate relative to obtain lawful permanent residency, the client must complete and submit a Form I-130 petition along with an Affidavit of Support (either Form I-864 or Form I-134).

Is the petitioner's undocumented spouse seeking LPR status?

If the spouse of the U.S. citizen is undocumented, check the spouse's eligibility below.
See www.nolo.com/legal-encyclopedia/can-illegal-immigrant-get-green-card-based-marriage-us-citizen.html.

If the spouse entered legally but overstayed, the client must show:

- Copy of visa stamp OR Form I-91 exit/entry card; and
- Entered marriage in good faith.
    - *Evidence of a "good faith" marriage includes, but is not limited to, insurance policies, marriage certificate, evidence of children together, bank statements, photographs, utility bills, etc.*

If the spouse entered illegally, the spouse cannot apply for a green card within the U.S., but may apply for a green card outside the U.S. Possible bars to re-entry may apply. See INA § 212(a)(9)(B)(i)(I)-(II).

The U.S. citizen spouse should file the I-130. The undocumented spouse should file the I-485. The U.S. citizen spouse may file the I-130 and should consult an immigration attorney about how to bring the spouse legally into the U.S. The U.S. citizen may also want to file an Application for Provisional Unlawful Presence Waiver (I-601A), discussed in more detail below.

Did the petitioner's immediate relative enter the United States illegally?

If the immediate relative entered the United States illegally and remained for more than a year, the immediate relative may be **barred from re-entry** (up to 10 years) if he/she were to the leave the United States due to **unlawful presence**. The client may petition to have this unlawful presence bar **waived** by filing an Application for Provisional Unlawful Presence Waiver (I-601A).

The petitioner may file this form to seek a provisional unlawful presence waiver if the immediate relative:

1. Is physically present in the United States;
2. Is at least 17 years of age at the time of filing;
3. Is the beneficiary of an approved petition classifying him/her as the immediate relative of a U.S. citizen;
4. Is an immigrant visa case pending with the Department of State (DOS), which is related to the approved immediate relative immigrant visa petition classifying him/her as an immediate relative
5. Is or will be inadmissible only for unlawful presence in the U.S. for more than 180 days, but less than 1 year, or unlawful presence in the United States for 1 year or more during a single stay.

An Application for Provisional Unlawful Presence Waiver requires that the petitioner prove "extreme hardship" would result if the beneficiary was barred from re-entering the country. The beneficiary must show that he/she has a U.S. citizen spouse or parent (or qualifying relative) who would experience extreme hardship if he/she were refused admission to the U.S.

Factors considered in the Application for Provisional Unlawful Presence Waiver include, but are not limited to:

1. Health: ongoing or specialized treatment
2. Financial considerations: future employability, cost of care for family members
3. Education: loss of opportunity for higher education

4. Personal considerations: separation from spouse, children
5. Special factors: cultural, language, religious, ethnic obstacles, valid fears of persecution

Note: a person may not be eligible for a provisional unlawful presence waiver if he/she has a pending Form I-485 or if he/she is in removal proceedings.

If the relative qualifies under the guidelines above, please help client:

- Fill out Application for Provisional Unlawful Presence Waiver (I-601A);
- Include documents to support claim that the qualifying relative would experience extreme hardship if he/she were refused admission to the US
    - *e.g.: articles/studies on single motherhood and its effects on children*

Non-Immediate Relative:

Family relationships that do not qualify as "immediate relatives" are divided into "preference categories" (below). Clients will need to know which preference category their relatives fall under in order to fill out the Petition for Alien Relative (I-130).

Preference Categories for Family Members of U.S. Citizens:

- **Preference 1:** Unmarried sons and daughters of U.S. citizens, and their minor children, if any.
- **Preference 2:** *Not applicable to U.S. Citizens; covers spouses and children of Legal Permanent Residents.*
- **Preference 3:** Married sons and daughters (of any age) of U.S. citizens and their spouses and minor children.
- **Preference 4:** Brothers and sisters of U.S. citizens, and their spouses and minor children (provided the U.S. citizen is at least 21 years old).

https://travel.state.gov/content/visas/en/immigrate/family/family-preference.html

Whenever the number of qualified applicants for a category exceeds the available immigrant visas, there will be an i**mmigration wait.** In this situation, the available immigrant visas will be issued in the order in which the petitions were filed.

The filing date of a petition becomes what is called the applicant's **priority date.** Immigrant visas cannot be issued until an applicant's priority date is reached. *In certain categories with many approved petitions compared to available visas, **there may be a waiting period of several years, or more, before a priority date is reached***.

You can check the Visa Bulletin for the latest priority dates.

ii. Petition by LPR Family Member

The Legal Permanent Resident Petitioner must file the Petition for Alien Relative (I-130) using the following LPR preference categories (below). INA § 203(a).

What are the preference categories for family members of Legal Permanent Residents?

Preference 2A: Spouses and unmarried, minor (under age 21) children of LPRs. *Note: about 70% of the visas available for Preference 2 applicants will be granted to spouses and minor children.*

Preference 2B: Unmarried sons and daughters of LPRs (21 years and older).

For more information, see https://travel.state.gov/content/visas/en/immigrate/family/family-preference.html.

Is the Legal Permanent Resident prepared to file a petition for their family member?

- **First**, determine whether the relative seeking sponsorship is already present in the U.S. If yes, and the relative entered legally, help the client complete an *Application to Register Permanent Residence or Adjust Status* (Form I-485).
- **Second**, help the client complete a *Petition for Alien Relative* (Form I-130) and an Affidavit of Support (Form I-864). Biographic Information (Form G-325) is needed as well.
- **Third**, please determine whether the client is eligible for a **Fee Waiver**.

The Petition for Alien Relative must be **filed** and **approved**, and the family member's **priority date must become current** before filing the *Application to Register Permanent Residence or Adjust Status*. For more information please visit www.uscis.gov/green-card/green-card-through-family/green-card-family-member-permanent-resident.

D. CSPA Exception

Many immigration laws hinge on whether a relative is a child or an adult. The threshold is age 21. The **Child Status Protection Act (CSPA)** allows a beneficiary to retain "child" status in some proceedings, even if his 21st birthday occurs during the lengthy processing period. This includes:

- Derivative beneficiaries of asylum and refugee applications;
- Children of U.S. citizens;
- Children of lawful permanent residents (LPRs); and
- Children named as derivative beneficiaries of family and employment-based visa petitions, and diversity visa applications.

For more information, visit the USCIS website at https://www.uscis.gov/green-card/green-card-processes-and-procedures/child-status-protection-act/child-status-protection-act-cspa.

E. Adjustment of Status

Once an immigrant visa is available, an individual can apply for adjustment of status. In some cases this is done simultaneously with the immigrant petition; in other cases, a visa may not be available for many years after the petition is filed.

Who can apply for adjustment of status?

A person who is in the United States can apply to "adjust" from temporary ("nonimmigrant") status to lawful permanent resident status. To be eligible, the client must file to adjust his/her status:

1. Based on a family or employment immigrant petition;
2. Based on being the spouse or child (derivative) of another adjustment applicant (principal) who is filing to adjust status;
3. Based on admission as the fiancé(e) of a U.S. citizen and subsequent marriage to that citizen;
4. Based on asylum status;
5. Based on refugee status;
6. Based on Cuban citizenship or nationality;
7. Based on continuous residence since/before January 1, 1972.

For more information, visit the USCIS Adjustment of Status page. https://www.uscis.gov/green-card/green-card-processes-and-procedures/adjustment-status

When can an adjustment of status application be filed?

A client may be able to file an immigrant petition and an adjustment application concurrently. This typically applies where the immigrant petition is not subject to the visa availability limit. Concurrent filing is allowed in the following instances:

- Immediate relatives of U.S. citizens living in the United States
- Most employment based applicants and their eligible family members when a visa number is immediately available
- Special immigrant juveniles
- Self petitioning battered spouse or child if:
    - The abusive spouse or parent is a U.S. citizen, or
    - If an immigrant visa number is immediately available
- Certain Armed Forces Members applying for a special immigrant visa

If the client's underlying immigration petition is subject to the visa availability limit, the client cannot file for adjustment of status until **a visa is available in their category**. To determine whether a visa is available, visit https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates.

Is the client prepared to apply for adjustment of status?

If the client is ready to apply for adjustment of status, help the client fill out an Application to Register Permanent Residence or Adjust Status (I-485). In addition, the client must attach appropriate documentation. (Appropriate documents will differ based on type and requirements of underlying petition.)

- Criminal history records;
- Birth certificate;
- Copy of passport page with nonimmigrant visa;
- Photos: two identical color photographs of the petitioner taken within 30 days of the filing;
- Form G-325A Biographic Information Sheet; and
- Other required documents

For instructions on where to file Form I-485, visit www.uscis.gov/sites/default/files/files/form/i-485instr.pdf

IV. Special Circumstances Visas

The immigration laws recognize that certain individuals enter the U.S. illegally but should be protected because the individuals are themselves victims of some illegal or immoral conduct. Individuals who fit in these categories include victims of trafficking, persecution, and domestic violence.

A. Victim of Crime (U-Visa)

A victim of criminal activity may qualify for the U-Visa. See INA § 101(a)(15)(U).

Does the client qualify for a U-Visa?

The client may qualify for a U-Visa, if he satisfies all of the following:

- Client must be the victim of a qualifying criminal activity. Please see the U-Visa Table (below) for qualifying criminal activity.
- Client must suffer substantial physical or mental abuse as a result.
- Client must have information about the criminal activity. If the client is under the age of 16 or has a disability, a parent, guardian, or "next friend" may possess the information about the crime on the client's behalf.

    - *A "next friend" is a person who represents another who is under disability or otherwise unable to maintain a suit on his own behalf and who does not have a legal guardian.*
- Client must be helpful to law enforcement in the prosecution of the crime. If the client is under the age of 16, a parent, guardian, or friend may assist law enforcement on the client's behalf.
- The crime must have occurred in the U.S. or violated U.S. laws.
- The client must meet admissibility requirements of the U.S. If the client is not admissible, he may submit an Application for Advance Permission to Enter as a Nonimmigrant (I-192).

Qualifying Criminal Activities for U-Visa:

Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Unlawful Criminal Restraint, Kidnapping, Female Genital Mutilation, Felonious Assault, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Other Related Crimes, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering

Obtaining a U-Visa is an extremely long process and CLA-LA cannot help clients with the entire process at the clinic. For clients who may qualify, please refer them to an appropriate legal aid organization or speak with the Executive Director about referring them to a private attorney.

Can the client demonstrate that they were a victim of crime?

When filing for a U-visa, the client must demonstrate that he/she suffered direct and proximate harm as a result of the commission of qualifying criminal activity. The client must include with his/her petition evidence establishing he/she was a victim of qualifying criminal activity. The types of evidence the client may submit include, but are not limited to:

1. Trial transcripts
2. Court documents
3. Police reports
4. News articles
5. Affidavits
6. Orders of protection

To obtain a copy of a crime report from LAPD, the client must mail a written request to Records and Identification Division. The request must provide:

- A check or money order payable to the LAPD in the amount of $24.00.
- The name and addresses of the victims
- The insurance policy number and/or claim number
- A release from the victim if the request is from an attorney
- The type of report (robbery, assault, etc.)
- The date and location of occurrence
- A report (DR) number, if known
- Proof of relationship for parents of minor victim or the spouse or relative of a deceased victim

Mail the written request to:
Los Angeles Police Department

R & I Division
PO Box 30158
Los Angeles, CA 90030
ATTN: Document Processing Unit

For recorded instructions, please call 213-486-8130 or 213-486-8133 (for Spanish)

Is the client ready to apply for a U-Visa?

If the client qualifies, the client should be advised to obtain an attorney who will assist him in completing the necessary forms and compiling the evidence. The following are required:

- Petition for U Nonimmigrant Status (I-918);
- U Nonimmigrant Status Certification (I-918, Supplement B);
    - Must be completed by a Federal, State, or local government official investigating or prosecuting the qualifying criminal activity.
- Personal Statement, describing the criminal activity; and
- Evidence to establish each eligibility requirement listed above.

For detailed instructions, please visit www.uscis.gov/i-918.

B. Human Trafficking (T-Visa)

Clients who are victims of human trafficking may be eligible for a T-Visa. INA § 101(a)(15)(T).

Does the client qualify for a T-Visa?

The client may qualify for a T-Visa if he satisfies all of the following:

1. The client was a victim of human trafficking, as defined by law. *The Department of Homeland Security defines human trafficking as labor or a commercial sex act induced or forced upon a person by fraud or coercion. 22 U.S.C. § 7102(9)-(10); INA §§ 101(a)(15)(T); 212(d)(13).*
2. The client is in the U.S. or at a port of entry due to trafficking.
3. The client complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or, was unable to cooperate due to physical or psychological trauma, or is under the age of 18).
4. The client demonstrated that he would suffer extreme hardship involving unusual and severe harm if removed from the U.S.
5. The client is admissible to the U.S.; if the client is not admissible, he may submit an Application for Advance Permission to Enter as a Nonimmigrant (I-192).

If the client does not qualify, please provide a brief overview of the requirements and offer to pray with him.

Is the client ready to apply for a T-Visa?

Obtaining a T-Visa is a complicated process, and **CLA-LA cannot help clients with the entire process**. For clients who may qualify, please refer them to an appropriate legal aid organization or speak with the Executive Director about referring the client to a private attorney who will assist him in completing the necessary forms and compiling the evidence. See INA § 214(o).

You may inform the client that following documents will be required:

- Petition for T Nonimmigrant Status (I-914);
- Declaration of Law Enforcement Officer (I-914, Supplement B);
    - This is not required, but it is highly encouraged that the client submits this
    - Must be completed by a Federal, State, or local government official investigating or prosecuting the qualifying criminal activity.
- 3 passport-size photographs;
- Personal Statement, describing the criminal activity; and
- Evidence that establishes each eligibility requirement under Section II. B. 2. (p. 6).

For detailed instructions, visit www.uscis.gov/i-914.

C. Refugees and Asylees

Refugees are those individuals outside their native countries who are unable or unwilling to return home because they have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42).

Asylees are those individuals who meet the definition of refugee above but apply for protection when they are already in the U.S. or are seeking admission at a port of entry. INA § 208(b)(1)(A).

Could the client qualify for asylum or refugee status?

If the client has a very compelling story about fleeing or leaving his native country, then he could potentially qualify for refugee status. See www.nolo.com/legal-encyclopedia/asylum-or-refugee-status-how-32299.html.

The application process for refugee status is complex, has high legal standards and is time sensitive. Please refer these cases to an appropriate legal aid organization or speak with the Executive Director about referring the client to a private attorney. See Appendix A.

A client may be eligible for **asylum** if the client has been persecuted in his native country because of (1) race, (2) religion, (3) gender, (4) particular social group, or (5) political opinion and has a reasonable fear of future persecution.

Is the client a refugee seeking to adjust status to Lawful Permanent Resident (LPR)?

A Lawful Permanent Resident (LPR) is defined by USCIS as "[a]ny person not a citizen of the United States who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as 'Permanent Resident Alien,' 'Resident Alien Permit Holder,' and 'Green Card Holder.'" www.uscis.gov/tools/glossary/lawful-permanent-resident-lpr.

For the client to adjust his refugee status to LPR, the client must:

- Have been physically present in the U.S. for at least 1 year after being admitted as a refugee;
- Not have had his refugee admission terminated; and
- Not have already acquired permanent resident (green card) status.

The client must apply for a green card 1 year after admission to the U.S. as a refugee. For more information, see https://www.uscis.gov/greencard/refugees.

Is the client ready to adjust status from Refugee to Lawful Permanent Resident?

Assist the client with completion of forms If the client qualifies, please help the client complete:

- Application to Register Permanent Residence (I-485);
- Biographic Information (G-325A);
- Report of Medical Examination and Vaccination Record (I-693);
  - Submit only the vaccination portion of Form I-693, unless the client had a Class A condition noted on the medical exam.
  - Copy of Customs and Border Protection Form (I-94); and
- The client will have received his I-94 form at the time of entry.
- Proof of any legal name change, if any.

See www.uscis.gov/i-485. In addition, determine whether the client is eligible for a Fee Waiver.

If the refugee has been found inadmissible for reasons such as felony convictions or health conditions, he can apply for a Waiver of Grounds of Excludability (I-602) based on humanitarian reasons, family unity, or national interests.

Is the client an asylee seeking to adjust status to Lawful Permanent Resident (LPR)?

In order for the client to adjust his asylee status to LPR, the client must:

- Have been physically present in the U.S. for at least 1 year after being granted asylum;
- Continue to meet the definition of asylee;
- Not abandon asylee status;
- Not firmly resettle in any foreign country; and
- Continue to be admissible to the U.S.

Is the client ready to adjust status from Asylee to Lawful Permanent Resident?

If the client qualifies, please help the client complete:

- Application to Register Permanent Residence (I-485);
- Biographic Information (G-325A);
- Report of Medical Examination and Vaccination Record (I-693);
  - Submit only the vaccination portion of Form I-693, unless the client had a Class A condition noted on the medical exam.
- Copy of Customs and Border Protection Form (I-94); and
  - The client will have received his I-94 Form at the time of entry.

In addition, determine whether the client is eligible for a Fee Waiver.

If the client has already completed the above documents, advise him to: (a) obtain two passport-style photos; (b) obtain certified copies of court records if client has been arrested; (c) mail the entire packet to the US Citizenship and Immigration Services (USCIS) Lockbox in either Dallas or Phoenix, depending on the geographical location of the client.

For more information, see www.uscis.gov/i-485.

D. Abandoned or Neglected Children (SIJS)

The Special Immigrant Juvenile Status (SIJS) program is intended to help foreign children in the U.S. who have been abused, abandoned, or neglected. See INA § 101(a)(27)(J). Children who qualify can obtain a green card through the SIJS program are then able to live and work permanently in the U.S. www.uscis.gov/i-360.

Does the client qualify for Special Immigrant Juvenile Status?

In order to qualify for SIJS, the client must:

- Have been 21 years old on the filing date of his Petition for Amerasian, Widow(er), or Special Immigrant (I-360);
- Have a state court order in effect on the date Form I-360 is filed and when USCIS makes a decision on the application;
  - The requirement that the client's state court order be in effect when USCIS makes its decision, does not apply if the client "aged out" of the state court's jurisdiction due to no fault of his own.
  - The state court order must indicate findings that: (1) the client is a dependent of the court, or has been legally placed with a state agency, private agency, or private person; (2) it is not in the client's best interest to return to his home country; and (3) the client cannot be reunited with a parent because of abuse, abandonment, neglect, or a similar reason under state law. See www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij.

- Not be married, both when he filed the application and when USCIS made a decision on the application; and
    - "Not married" includes a child whose marriage ended in annulment, divorce, or death.
- Have been physically within the U.S. when Form I-360 was filed.

Is the client ready to seek Special Immigrant Juvenile Status?

If the client satisfies the eligibility requirements above, CLA-LA can refer them to an immigration attorney with the advice to seek SIJ status. Please speak to the Executive Director for a referral.

If the client obtains a green card through the SIJS program:

- The client can never petition for a green card for his parents; and
- The client cannot petition for a green card for his siblings until the client becomes a U.S. citizen.

E. Victims of Domestic Violence (VAWA)

The Violence Against Women Act (VAWA) is designed to protect men, women, and children, who were abused by their U.S. citizen or LPR spouse or parent. See www.uscis.gov/humanitarian/battered-spouse-children-parents.

Does the client qualify for VAWA?

To qualify, the client must fit within one of the following categories:

- Was or is the abused spouse of a U.S. citizen or permanent resident;
- Is the parent of a child who has been abused by U.S. citizen or permanent resident spouse;
- Is the parent of a U.S. citizen and has been abused by U.S. citizen son or daughter; or
- Is an unmarried child, under the age of 21, who has been abused by a U.S. citizen or a permanent resident.

Is the client currently in removal proceedings?

If the client is in removal proceedings and meets the requirements for VAWA, he might be able to file for **VAWA Cancellation of Removal (EOIR-42B)**. INA § 240A(b)(2). Please speak with the Executive Director to refer client to an immigration attorney with experience in VAWA.

Is the client seeking work authorization after receiving VAWA status?

If the client's Petition (I-360) was approved and USCIS decided to defer action in his case, the client will be eligible to work in the U.S. See INA § 204(a)(1)(K)(i). To apply for work authorization, the client must

file an Application for Employment Authorization (I-765). For detailed instructions on how to complete Form I-765, please visit www.uscis.gov/i-765.

Is the client seeking LPR status after receiving VAWA status?

To obtain LPR status after receiving VAWA status, the client may file Form I-360 and an Application for Adjustment of Status (I-485) at the same time. After the client's Form I-360 is approved and he has obtained VAWA status, the client should adjudicate I-485. See www.uscis.gov/i-485.

6. GOVERNMENT BENEFITS

Clients who come to CLA-LA seeking assistance with obtaining government benefits often come with questions regarding their eligibility and the application process. Many have already applied for benefits but are confused by the lack of response. For these clients, CLA-LA is able to educate them about their rights and the general process.

CONTENTS

Public benefits are government programs that ensure people can obtain **basic life necessities**. They are sometimes referred to as welfare or welfare benefits. There are public benefits programs designed to help people get food, shelter, healthcare, childcare, cash, and emergency support. To qualify for any public benefits program, the client must meet certain requirements. Each benefits programs works differently and has different rules and requisites. A client may qualify for multiple public benefits, not just one.

Two major sources of public benefits are Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI), both coordinated by the **Social Security Administration**. In addition, there are several programs that are administered at a state or local level, including:

1. **Basic Needs Cash Benefits**: Programs such as General Assistance (GA), General Relief (GR), and CalWORKS provide temporary or long-term financial aid (cash) to low-income people and families.
2. **Food Benefits**: CA provides food benefits through a program called CalFresh (food stamps). CalFresh provides money to low-income people and families to buy food. Pregnant women, infants, and children may be eligible for WIC, a program that provides food for pregnant women or mothers of young children.

3. **Health Care Benefits**: CA provides free health insurance and coverage to low-income people and families through a program called Medi-Cal. People who do not qualify for Medi-Cal may otherwise sign up for health care through Covered California.

Criminal history or incarceration in prison may affect a client's ability to obtain public benefits, including those listed above.

TIMELINE FOR APPEAL

If the client wants to **appeal a decision** reducing their benefits, they should be informed that an appeal made immediately (typically **within 10 days**) may enable them to continue receiving the same level of benefits during the appeals process. This is called **"aid paid pending."** However, if the appeal is later denied, the client may have to pay back any money they were not eligible to receive. For more information on relevant timelines, see https://www.ssa.gov/pubs/EN-05-10041.pdf.

REFER OUT

For those clients who come with questions about how to **appeal a decision** denying or reducing their benefits, it is important that we are sensitive to their situations. Many of our clients have limited financial resources, so the denial or reduction of benefits can be stressful and frightening. **Please take the time to listen and acknowledge their concerns**. However, because CLA-LA is unable to provide on-going representation, we recommend referring clients out in most appeals cases.

I. Supplemental Security Income (SSI)

Clients seeking SSI must be over 65 years old, disabled, or blind. 42 U.S.C. § 1381. SSI benefits are provided by the Social Security Administration (SSA), and are intended to provide aid for those who have little to no income, in order to help meet the basic needs of food, clothing, and shelter.

If the client has not yet applied for SSI, first determine if the client satisfies all four of the eligibility requirements. Then, if the client qualifies, refer them to the local Social Security office for help. To find a local Social Security Center, enter the client's zip code on this website: www.ssa.gov/locator.

If the client does not appear to satisfy the eligibility requirements, please acknowledge the difficulty of the situation and offer encouragement and prayer. If able, please address any immediate needs and refer the client to a Social Care Volunteer.

If the client is waiting for the Social Security Administration (SSA) to determine eligibility, he or she may be frustrated and confused about the lack of communication. The SSA can take several months to render an initial decision, so please ask the client to continue to be patient and understanding. It may take up to 2 years to obtain a decision if the client is denied and decides to appeal to the Administrative

Law Judge. Please work with the client to address any other immediate needs. You may also want to encourage the client to speak with his Congressional Representative, whose office staff will have caseworkers who are able to work through the government bureaucracy.

A. SSI Eligibility

Does the client have questions about the SSI application process?

If the client has not yet applied for SSI, CLA-LA can advise the client about the **application process** and the **eligibility requirements** that must be satisfied. **However**, CLA-LA *does not have the resources to assist clients who need to fill out an initial application*. After walking the client through the basic requirements, refer them to the appropriate resource listed below.

In order to receive SSI, the client must:

1. Be 65 or older, blind, OR disabled;
2. Have limited income;
3. Have limited resources; and
4. Be a U.S. citizen, national, or qualified alien that lives in the United States or the Northern Mariana Islands.

More information about each of these criteria can be found below. You can also use the **Benefit Eligibility Screening Tool (BEST)**, a short questionnaire which takes a few minutes, to determine if the client is eligible: www.benefits.gov/ssa. Sometimes the most important advice that we can give a client is, "We are sorry that you are ineligible for SSI, but please do not lose hope – there may be other ways of obtaining the assistance you seek," and refer the client to a Social Care or Spiritual Care volunteer as needed.

If the client **appears to qualify for SSI based on age**, please refer the client to their local senior center. To find a senior center, visit http://wdacs.lacounty.gov/service-locations/community-and-senior-centers-locator/.

If the client **appears to qualify for SSI based on a disability**, please refer the client to an Independent Living Center that can provide on-going assistance. To search for an Independent Living Center by county, visit www.rehab.cahwnet.gov/ils/ILC-List.html.

Is the client disabled?

The client should be reminded that he has the burden of **proving his specific disability**. The client's treating physician will need to write the SSA a letter describing the specific condition, limitations, and struggles. See 20 C.F.R. § 416.202 and www.ssa.gov/disability/professionals/bluebook/AdultListings.htm.

Please inform the client that the SSA does not recognize a partial or short-term disability. The client is either able or unable to work. See www.ssa.gov/pubs/EN-05-10029.pdf.

The Social Security Administration will consider whether the client's condition prevents them from participating in **substantial gainful activity (SGA)**. See 42 U.S.C. § 1382c. Age, education, and training are considered. Once the client applies, the Social Security Administration has the burden to show the client can participate in SGA. See www.socialsecurity.gov/oact/cola/sga.html.

2017 SGA INCOME LIMITS

The 2017 SGA limit is **$1,170 a month** for non-blind individuals. See www.socialsecurity.gov/oact/cola/sga.html. If an individual is earning more than this amount, they are generally considered capable of SGA and not disabled.

SGA for the blind does not apply to Supplemental Security Income (SSI) benefits.

In order to determine whether the client has a qualifying disability, the following questions may be helpful:

1. **For how long has the client been disabled?** The disability must have effects that prevent the client from working for at least 12 continuous months OR the disability must be expected to lead to the client's death. 42 U.S.C. § 1382c(3)(A).
2. **How severe is the client's condition?** The client's condition must interfere with basic work activity in order to be considered a disability by the SSA. 42 U.S.C § 1382c(3)(B).
3. **Is the client's disability found on SSA's list of disabling conditions?** A list of conditions can be found at: www.ssa.gov/disability/professionals/bluebook/AdultListings.htm.
4. **Can the client do the work or activities they did previously?** If yes, the client may be ineligible.
5. **Can the client participate in any other type of SGA?** If yes, the client may be ineligible.

Does the client have "limited income"?

To be eligible for SSI benefits, the client must have **"limited income."** "Limited income" may include both earned and unearned income. The client's countable income is calculated by **subtracting excludable items from the client's monthly (unearned + earned) income**. See 20 C.F.R. § 416.1100.

Unearned income includes Social Security Benefits, net earnings from self-employment, and money from shelter workshops. An individual must have less than $755 a month in unearned income, and a couple must have less than $1,123 a month in unearned income to qualify for SSI.

Earned income includes wages, worker's compensation, veteran's compensation, unemployment, and pension. An individual can earn up to $1,155 a month, and couples can earn up to $2,291 a month and still qualify for SSI. See http://www.socialsecurity.gov/pubs/EN-05-11015.pdf for more information.

COMMON EXCLUDABLE INCOME ITEMS

For an exhaustive list of exclusions, see pages 12-15 of www.socialsecurity.gov/pubs/EN-05-11015.pdf.

- $20 a month of most income the client receives
- $65 a month of the client's earnings, and half the amount over $65
- Supplemental Nutrition Assistance Program (SNAP) benefits (food stamps)
- Shelter provided by private non-profit organizations
- Most home energy assistance
- For a student, some wages or scholarships
- For disabled clients who work, wages the client uses to pay for items or services that help the client to work (ex. wheelchair)

Does the client have limited resources (possessions)?

To be eligible for SSI, the **"countable resources"** for single individuals and married couples must be less than $2,000 and $3,000 respectively. The client's countable resources are calculated by **subtracting excludable items from the total value of the client's possessions**. See 42 U.S.C § 1382b.

COMMON EXCLUDABLE RESORUCE ITEMS

For an exhaustive list of exclusions, see www.ssa.gov/ssi/text-resources-ussi.htm.

- Home the client lives in and the land it is on;
- Household goods and items of personal effect (ex. wedding rings);
- Life insurance policies with a combined value of $1,500 or less;
- One vehicle used for transporting family members;
- Burial plots for the client and members of the client's immediate family;
- Up to $1,500 in burial funds for the client and up to $1,500 in burial funds for the client's spouse;
- Retroactive SSI or Social Security benefits for 9 months after receipt;
- Grants, scholarships, fellowships, or gifts set aside for education expenses for 9 months after receipt.

Is the client a U.S. citizen, national, or qualified alien that lives in the United States or the Northern Mariana Islands?

To determine whether the client is a "qualified alien," please see www.socialsecurity.gov/ssi/text-eligibility-ussi.htm#qualified-alien.

B. Denial of SSI Application

SSI applications are commonly denied for two reasons: (1) the client exceeds income qualifications, or (2) the client's disability was not satisfactorily proven.

Please look at the **Notice of Decision** sent to the client to determine why the client was denied SSI, and explain the reason to the client as it may help him accept the determination. If the client intends to appeal the decision, please advise them of the process (described in the SSI Appeals section) so that they can prepare for an appeal.

Did the client exceed SSI income qualifications?

If the SSA determines that the client works above the substantial gainful activity (SGA) limit, the client will be denied benefits. The 2017 SGA limit is **$1,170 a month** for non-blind individuals. For more information, see www.socialsecurity.gov/oact/cola/sga.html.

Did the client sufficiently prove their disability?

Has the condition persisted for and prevented the client from engaging in SGA for at least 12 months? If no, the client may be ineligible for SSI.

Did the client follow the prescribed therapy from their treating physician? The client should have a regular treating doctor who has knowledge of the disability and a medical plan to follow. If the client is financially unable to follow their doctor's instructions, they must let their examiner know so that their financial situation is considered.

Is the SSA able to communicate with the client? The SSA must be able to send notices and necessary forms to the client. If the client is homeless, the SSA will send forms through shelters or other organizations.

Does the client have a history of alcoholism or evidence of alcoholism in their medical records? The SSA may not recognize the client's disability if there is evidence of alcoholism and the claimed disability can improve with the absence of alcohol. See 42 U.S.C. 1382c(a)(3)(J).

Can the client challenge the denial of benefits?

If the client was denied benefits for excessive income, please review the client's limited income calculation to make sure it was calculated correctly.

- If yes, please offer support and prayer, and explain that the client is ineligible for financial reasons.
- If no, please advise the client of the appeals process.

If the client was denied benefits for lack of a disability, please explain that the SSA makes the final determination and that if the client chooses to appeal, they should collect documentation to prove their specific condition.

C. Change in Circumstances & Overpayment

SSI benefits are very fact-specific, and the client should be aware that failing to properly report a change in the client's circumstances (such as a change in income, a change in living arrangements, a change in meals eaten at or away from home, etc.) may result in overpayment.

Caution the client that **overpayment is not free money** that the client may keep without consequences; it is given in error and must be returned/repaid. If the client fails to report a change in circumstances or knows that they are being overpaid and keeps the money anyway, they may be committing **fraud** and could be subject to criminal charges.

What changes in circumstances must be reported?

The client must report any of the changes listed below to the SSA, because they may affect the client's eligibility for SSI and his or her benefit amount:

- Change of address
- Change in living arrangements
- Change in earned and unearned income
- Change in resources, including spouse's resources
- Death of spouse or family member in household
- Change in marital status
- Change in citizenship or immigration status or legal alien status
- Change in help with living expenses from friends or relatives
- Eligibility for other benefits or payments
- Admission to or discharge from an institution (hospital, nursing home, correctional institution, etc.)
- Change in school attendance (if under age 22)
- Sponsor changes of income, resources, or living arrangements for aliens
- Leaving the U.S. for a full calendar month or for 30 consecutive days or more
- Unsatisfied felony or arrest warrant for flight or escape from custody

Clients can report all changes by calling the SSA at (800) 772-1213. The SSA office is open from Monday to Friday, 7:00 am to 7:00 pm. For more information on reporting responsibilities, please visit https://www.ssa.gov/ssi/text-report-ussi.htm.

How does a change in circumstances affect the client's benefits?

One of the common changes in circumstance is that a client **begins receiving or has an increase in income**. Depending on whether the client has reached full retirement age, their SSI benefits can be reduced. Here is an example of how that would be calculated:

- If the client is younger than full retirement age during all of 2016, the SSA will deduct $1 for every $2 made in excess of $15,720.
- If the client has reached full retirement age during 2016, the SSA will deduct $1 for every $3 made in excess of $41,880, until the month the client reaches full retirement age.

See www.ssa.gov/retirement/ageincrease.htm for more information.

Working people with disabilities may be able to **deduct some expenses** from the amount of earnings SSA uses to calculate the SSI benefit amount. For more information, see https://www.ssa.gov/ssi/spotlights/spot-work-expenses.htm.

In addition, benefits may be reduced by 1/3 if the client is living at a relative or friend's home without paying rent or is receiving substantial support with food, clothing, or personal items. See 20 C.F.R. § 416.1131. Also see https://www.ssa.gov/ssi/spotlights/spot-one-third-reduction.htm

For more information, please visit https://www.ssa.gov/pubs/EN-05-10069.pdf.

What happens if changes are not reported on time?

The client may become **underpaid** and not receive the benefits due as quickly as he or she otherwise could.

The client may also become **overpaid**. Overpayments occur when the SSA discovers a change in the client's file or by mistake. The SSA may correct the overpayment by reducing the client's payments to recover its money. For more information on overpayments, please visit https://www.ssa.gov/ssi/text-overpay-ussi.htm.

If SSI has overpaid the client, what options are available?

1) Withholding
Generally, SSA will withhold 10% of the benefit total until total amount of the overpayment has been recovered. https://www.ssa.gov/pubs/EN-05-10098.pdf. If this would cause hardship, the claimant may request that SSA withhold a smaller amount. The smallest amount that SSA can withhold is $10. https://secure.ssa.gov/poms.nsf/lnx/0202210030#b.

2) Repayment
The client may also choose to repay the overpaid amount directly to the SSA. To set up a payment schedule, the client may contact the local SSA office to discuss. For more information, see "How to Cope with Social Security Overpayments," www.ptla.org/how-cope-social-security-overpayments.

3) Waiver
If the client does not believe that they are at fault, they can request that the SSA waive the overpayment. For a successful waiver the client must show that the overpayment was not their fault AND that the reduction of benefits to recover the overpayment would deprive them of the income and resources needed for "ordinary and necessary living expenses."

The client will have to submit bills to show that their monthly expenses use up all of their income and that it would be a hardship for them to repay. See 20 C.F.R. §§ 416.550-416.556. To waive the overpayment, the client must complete a Request for Waiver of the Overpayment Recovery Form (SSA-632-BK).

4) Appeals
If the client believes that the overpayment amount or the overpayment claim is **incorrect**, they may **appeal** the SSA's decision. By appealing, they are re-requesting that the SSA review their case again or meet with them in conference or hearing. If the client wishes to appeal, educate the client about the appeals process and assist with completing SSA-632-BK and SSA-561. Please visit the SSI Appeals section. If necessary, refer the client out to another legal resource.

D. SSI Appeals

Appeals Process
The SSI appeals process is a four-step process:

1. Reconsideration
2. Appeal to an Administrative Law Judge
3. SSA Appeals Council and
4. Federal Court.

See www.socialsecurity.gov/pubs/EN-05-10041.pdf for more information.

If the client wants to **appeal a decision** reducing their benefits, they should be informed that an appeal made immediately (typically **within 10 days**) may enable them to continue receiving the same level of benefits during the appeals process. This is called **"aid paid pending."** However, if the appeal is later denied, the client may have to pay back any money they were not eligible to receive. For more information on relevant timelines, see https://www.ssa.gov/pubs/EN-05-10041.pdf.

Appealing Recent Medical Decisions

If the client recently applied for Social Security disability benefits or Supplemental Security Income (SSI) and were denied for medical reasons, he/she may request an appeal online and provide documents to support his/her appeal electronically. Please see https://www.ssa.gov/disabilityssi/appeal.html.

Appealing Other SSI Decisions

If the client wants to appeal any other kind of Social Security decision, he/she can call the SSA's toll-free number, 1-800-772-1213 (TTY 1-800-325-0778) or contact the local Social Security office.

REFER OUT

Advise the client **that the appeals process may become complicated** and it would be best to retain an attorney. Please speak with the Executive Director about referring the client to a private attorney, or refer the client to another legal aid resource that can provide ongoing assistance.

II. Social Security Disability Insurance

If the client is **disabled but does not satisfy SSI's eligibility requirements**, they may be eligible to receive SSDI if they have a **work history**. SSDI is an insurance program for clients who have enough "work credits" to qualify, have a condition that SSA recognizes as a disability, and are unable to work for more than a year. Helping a client with their SSDI claim is similar to helping a client with his SSI claim, although some of the requirements are different. www.ssa.gov/dibplan/dqualify.htm.

Please note that clients may be able to receive **both** SSI and SSDI. If the client's SSDI benefit is less than the maximum amount of SSI that can be received, the client should receive their SSDI plus the difference between the maximum SSI amount and their SSDI benefit.

If the client has not yet applied for SSDI, CLA-LA can advise the client about the application process and the eligibility requirements that must be satisfied. If the client needs additional assistance, please refer the client to an Independent Living Center that can provide on-going assistance. To search for an Independent Living Center by county, visit www.rehab.cahwnet.gov/ils/ILC-List.html. CLA-LA does not have the resources to assist clients who need to fill out an initial application.

If the client does not appear to meet SSDI's eligibility requirements, please offer your client encouragement and support. If able, please address any immediate needs and refer the client to a spiritual care or social care volunteer.

Clients who are **waiting for the initial determination** about their SSDI benefits are often frustrated and confused about the lack of communication. The SSA can take **several months** to render an initial decision. If the client is found to be ineligible and chooses to appeal to an Administrative Law Judge, it may take up to 2 years for a decision, so please ask the client to continue to be patient and understanding. Also, please work with the client to address any immediate needs and refer the client to a Social Care volunteer.

If the client is seeking to appeal an SSDI determination, please inform them about the process. CLA-LA is not able to take on appeals as we do not provide ongoing representation.

A. SSDI Eligibility

The two eligibility requirements for SSDI are (1) sufficient earned "work credits"/quarters of coverage, and (2) a recognized disability.

If the client has not yet applied, first determine if the client satisfies the two eligibility requirements. Then, if needed, refer the client to an Independent Living Center that can provide assistance. To search for an Independent Living Center by county, visit www.rehab.cahwnet.gov/ils/ILC-List.html.

If the client does not satisfy the eligibility requirements, please acknowledge the difficulty of the situation and offer encouragement. If able, please address any immediate needs and refer to a Social Care volunteer.

How many work credits (or "quarters of coverage") does the client have?

To be eligible, the client must have earned a certain number of work credits. As of 2017, to earn a single work credit, the client must have earned $1,300. See www.ssa.gov/OACT/COLA/QC.html. Regardless of how much an employee works or earns, they may not earn more than 4 credits in one year.

A client can keep track of work credits online by creating a **"My Social Security"** account at www.ssa.gov/planners. From the site, the client can see how many more credits are needed to be eligible for SSDI.

Does the client have a recognized disability?

The client must prove their specific disability, just as he would if they were applying for SSI. The client's treating physician will need to write the SSA a letter describing the specific condition, limitations, and struggles.

Please inform the client that the SSA does not recognize a partial or short-term disability. The client is either able or unable to work. See www.ssa.gov/pubs/EN-05-10029.pdf.

The Social Security Administration will consider whether the client's condition prevents them from participating in **substantial gainful activity (SGA)**. See 42 U.S.C. § 1382c. Age, education, and training are considered. Once the client applies, the Social Security Administration has the burden to show the client can participate in SGA. See www.socialsecurity.gov/oact/cola/sga.html.

2017 SGA INCOME LIMITS

The 2016 SGA limits are **$1,170 a month for non-blind individuals and $1,950 a month for blind individuals**. If an individual is earning more than this amount, they are generally considered capable of SGA and not disabled.

B. SSDI Appeals

The SSDI appeals process is the same as SSI's process:

1. Request for Reconsideration
2. Appeal to an Administrative Law Judge
3. SSA Appeals Council and
4. Federal Court.

Appealing Recent Medical Decisions

If the client recently applied for Social Security disability benefits or Supplemental Security Income (SSI) and was denied for medical reasons, he/she may request an appeal online and provide documents to support his/her appeal electronically. The client can file an appeal online even if he/she lives outside of the United States. Please visit https://www.ssa.gov/disabilityssi/appeal.html.

Appealing Other SSDI Decisions

If the client wants to appeal any other kind of Social Security decision, he/she can call the SSA's toll-free number, 1-800-772-1213 (TTY 1-800-325-0778) or contact his/her local Social Security office.

REFER OUT

Advise the client that the appeals process may become complicated and it would be best to retain an attorney. Please speak with the Executive Director about referring the client to a private attorney, or refer the client to another legal aid resource that can provide ongoing assistance.

III. General Relief and CalWORKS

Programs such as General Assistance (GA), General Relief (GR), and CalWORKS provide temporary or long-term basic cash assistance to low-income people and families.

Is the client eligible for General Assistance/General Relief?

General Assistance/General Relief is designed to provide cash assistance to adults who have little money, no sources of support, and who are not currently receiving any other public benefits. **Every county in CA runs its own GA or GR program**, and has its own rules, including specific limits on the income and property he or she may have. Please have the client contact the local county welfare agency for more details.

In general, to be able to get GA/GR, the client must:

- Be at least age 18;
- Be a resident of the county where the client is applying;
- Be a U.S. citizen, a legal permanent resident, or an immigrant with satisfactory status;
- Have a Social Security Number; and
- Have limited income and property.

In Los Angeles County, see the **Department of Public Social Services** website for more information and to apply for General Relief. https://dpssbenefits.lacounty.gov/ybn/Index.html.

Is the client eligible for CalWORKs?

CalWORKs is for **families with children** who need support because **at least one parent is unemployed (working less than 100 hours per month), disabled, absent, incarcerated, or deceased**. It is also available for caretakers of foster children. CalWORKs provides monthly cash aid, access to food and health care benefits, and other services for families with children. California runs CalWORKs as part of its Temporary Assistance for Needy Families (TANF) program. Both the federal and California governments establish the major rules for this program, but each county operates their own program, and thus may have different rules on applying and receiving services.

In general, to be able to get CalWORKs, the parent or caretaker with at least one child must meet all of the following requirements:

- The parent or caretaker must be a CA resident and be legally present in the U.S.
- At least one child in the home must be under age 18 and need support because at least one parent is unemployed, disabled, absent, incarcerated, or deceased.
- The family's resources must be no greater than the CalWORKs resource limit.
- The family's income must be no greater than the CalWORKs income limit.

For more information, please visit the CalWORKS website at http://www.cdss.ca.gov/calworks.

V. CalFresh and WIC

Is the client eligible for CalFresh (food stamps)?

CalFresh is California's food stamps program, providing money for low-income adults and their families to buy food.

Each county runs its own CalFresh program and issues food benefits (food stamps) in the form of a plastic **Electronic Benefit Transfer (EBT)** card, which looks and feels like a credit card. For CalFresh, a household can be one person, or it can be any group of people who live together, buy food, and make meals together.

There are different factors that are considered to determine whether the client is eligible. Most are related to residency, citizenship/immigration status, and income. To be eligible for CalFresh, the client must:

- Be a resident of the county he or she is applying;
- Be a U.S. citizen or a "qualifying noncitizen" (i.e. *if the client is a lawful permanent resident or green card holder AND meets all other eligibility requirements*);
- Have a monthly total income no greater than the CalFresh income limit.

For more information, please visit the CalFresh website at http://www.cdss.ca.gov/inforesources/calfresh and find eligibility details at http://www.cdss.ca.gov/inforesources/CDSS-Programs/CalFresh/Eligibility-and-Issuance-Requirements.

Is the client eligible for WIC assistance?

WIC stands for Women, Infants & Children, and is a food assistance program for low-income women, women who are pregnant, postpartum, or breastfeeding, infants, and children under age 5. WIC provides nutritious food, nutrition education, breastfeeding support, and health service referrals. With WIC benefits, the client can obtain coupons for items such as milk, cheese, eggs, bread, cereal, juice, peanut butter, fruits and vegetables, infant food, and more.

To be eligible for WIC, the client must:

- Be a resident of California;
- Be a woman who is pregnant, postpartum, breastfeeding, and/or the parent/guardian of a child up to age 5; and
- Have less than the maximum yearly income allowed for her household size.

For more information, please visit the WIC website at http://www.fns.usda.gov/wic/women-infants-and-children-wic or contact the local WIC office to make an appointment. To find a WIC office near the client, please contact 1-800-852-5770 or 1-888-942-9675.

Where else can the client get food assistance?

A **food bank** is a nonprofit organization that asks for, stores, and gives out food. They sometimes give the food to a variety of smaller organizations (churches, non-profits, community centers, libraries) that also serve people in need.

The client does not need to enroll in any public benefits programs to visit a food bank or partner organization for food.

To find a food bank or other partner organization that gives out donated food near the client, visit http://www.cafoodbanks.org/Hunger-in-CA or call the Association of California Food Banks at 866-321-4435.

V. Healthcare Benefits

Can the client sign up for health insurance through Covered California?

Covered California is an online health care marketplace created pursuant to the 2014 **Affordable Care Act (ACA)** where the client can sign up for health care coverage online, by phone, by mail, or in person.

This online marketplace is a website where the client can shop by choosing a health care plan and **compare various plans' prices and benefits**. Each health care plan must cover **essential health benefits**,

such as doctor visits, hospitalization, emergency care, maternity leave, pediatric care for children, and prescriptions. For more information, please visit http://www.coveredca.com/

To use the Covered California health insurance marketplace, the client must:

- Be a resident of California
- Be lawfully present in the United States
- Be age 18 or older, and
- Not be currently incarcerated

Clients may be eligible for **premium subsidies** if their household income is less than 400 percent of (4x) the federal poverty limit, and **cost-sharing benefits** if their household income is less than 250 percent of (2.5x) the federal poverty limit. For more information, see http://www.coveredca.com/individuals-and-families/getting-covered/health-care-costs/.

Is the client eligible for Medi-Cal?

Medi-Cal is **California's Medicaid program** that provides **free or low-cost health care coverage** for low-income CA residents. The client can apply as an individual or as a family.

Generally, people who receive SSI automatically receive Medi-Cal.

The client may be eligible for Medi-Cal if he or she is a **CA resident** or lawfully present in the U.S. AND has **limited income**. In addition, clients may be eligible for Medi-Cal if they fall into one of these special categories:

- Adults age 65 and older
- Blind or disabled individuals
- Children under age 21
- Pregnant women
- Women diagnosed with breast and/or cervical cancer
- Parents or caretakers of disadvantaged children under 21
- Residents in skilled nursing or intermediate care homes
- Individuals enrolled in certain other public benefits programs, including CalWORKs, SSI/SSP, Refugee Assistance Program, In-Home Supportive Services (IHSS), Foster Care or Adoption Assistance Program

For more information, see http://www.dhcs.ca.gov/services/medi-cal/Pages/DoYouQualifyForMedi-Cal.aspx.

The healthcare application on the **Covered California** website will inform the client whether they qualify for subsidized insurance or Medi-Cal; if the client is unsure which program will be best, encourage them to use this unified application process.

For more information, please visit https://www.medi-cal.ca.gov/ and find application steps for individuals at http://www.dhcs.ca.gov/individuals/Pages/Steps-to-Medi-Cal.aspx.

Is the client eligible for Medicare?

Medicare is a **federal health care program** for people who are **elderly** and people who have **disabilities**.

Medicare benefits are grouped into four parts:

- Part A covers hospital care;
- Part B covers outpatient services;
- Part C covers services offered by private insurance plans; and
- Part D covers prescription drugs.

There are two main ways for a client to obtain Medicare coverage: **Original Medicare** (Part A and Part B) or **Part C Medicare Advantage Plan**. Some people get additional coverage, such as Part D Prescription Drug Plan. Each Part has different requirements and rules.

If the client is a U.S. citizen, or has been a legal resident for 5+ years, he or she may qualify for Medicare if:

- The client is age **65 or older**, and he or his spouse has worked and **paid into Medicare for 10+ years**; OR
- The client has a **disability** that qualifies him for Social Security Disability Insurance benefits; OR
- The client has **permanent kidney failure** requiring dialysis or a kidney transplant.

There is a **two-year waiting period** before an SSDI (disability) recipient can receive Medicare.

For more information, please visit https://www.medicare.gov/.

Does the client qualify for both Medi-Cal and Medicare?

People who qualify for both Medicare and Medi-Cal are known as dual eligibles. People typically become **dual eligible** by first being enrolled in one program and later becoming eligible for the other program. **Dual eligibles do not necessarily receive the same benefits from Medicare and Medi-Cal**. The majority of dual eligibles receive full Medi-Cal benefits and assistance with Medicare premiums and cost-sharing.

For more information on dual eligibility, visit www.calduals.org.

7. DEBT & BANKRUPTCY

Many of our clients come to CLA-LA feeling overwhelmed because of their present struggles and inability to satisfy financial obligations. The legal and financial issues often become a weight that clients have difficulty carrying, and sometimes, our clients lose their sense of hope as they watch their debts continue to grow. As wise counselors, volunteer attorneys should help clients not only with their immediate financial concerns, but also with the restoration of their sense of personal and financial responsibility.

The client should have brought documents relating to all of the purported debt to the clinic. These documents can include monthly account statements, correspondences from the debt collector, and/or a credit report. If the client brought the documents, please review each one and determine what the debt is and whether the client agrees the debt is owed.

Encourage clients to work with their creditors to develop a financial payment plan that is realistic. All other problems not involving a debt purchaser should be addressed first through negotiation and mediation, leaving litigation as a last resort. Severe or time-sensitive problems should be referred – when possible – to a bankruptcy attorney as CLA-LA does not have the resources to provide on-going assistance at this time.

If the client did not bring any documents, help the client obtain a free credit report (available once a year) from www.annualcreditreport.com. Review the credit report and determine if the client agrees he owes the debt listed.

Please caution your client about admitting responsibility for the debt to the other party! The client should not be encouraged to lie, but, it is very important that the client confirm that the debt, as it is listed, is accurate without admitting responsibility.

CONTENTS

I. Bankruptcy

Filing for bankruptcy may be in the best interest of the client when the client has significant dischargeable debt. However, **the total cost to file for bankruptcy ranges from $1,000 to $10,000.** The cost varies depending on several factors: (1) whether the client qualifies for a fee waiver, (2) how much the client pays to hire an attorney, and (3) the size of the client's potential assets.

As of December 31, 2016, the cost of filing for Chapter 7 bankruptcy is $335, and the cost of filing for Chapter 13 bankruptcy is $310. The most up to date fees can be found by visiting http://www.cacb.uscourts.gov/filing-fees.

A client may be eligible for a fee waiver if they (1) are not be able to pay the fee in installments, and (2) their income is below 150% of the poverty line. 28 U.S.C. § 1930(f).

- Fee waiver for Chapter 7 bankruptcy requires filing an *Application to have the Chapter 7 Filing Fee Waived* (Form 103B). This form can be found by visiting http://www.uscourts.gov/forms/individual-debtors/application-have-chapter-7-filing-fee-waived.
- Fee waiver for Chapter 13 bankruptcy is *generally not granted* because a client must have enough money to qualify for a payment plan under Chapter 13.

Pro se debtors can find helpful information on the website for the bankruptcy court in the Central District at http://www.cacb.uscourts.gov/filing-without-an-attorney.

In Los Angeles, the client may also be referred to the **Bankruptcy Self Help Desk**, which is staffed by Public Counsel and is located within walking distance of the bankruptcy court. More information is available at the following link: http://www.publiccounsel.org/tools/assets/files/0145.pdf.

A. Considering Bankruptcy

Is the client's debt dischargeable in bankruptcy?

Certain debts are non-dischargeable, including:

- Student Loans, 11 U.S.C. § 523(a)(8);
    - While the client may claim undue hardship, it is up to the bankruptcy court to determine if his situation meets the legal standard set by Congress. The client is required to show:
    - He cannot pay his student loans and maintain a minimal standard of living;
    - His circumstances (often disability related) showing that the hardship is long-term; and
    - He has made good faith efforts to repay his student loans. For more information, please visit studentaid.ed.gov/repay-loans/forgiveness-cancellation#discharge-in.
- Government fines and taxes, 11 U.S.C. § 523(a)(7);
- Child or spousal support, 11 U.S.C. § 523(a)(5); and
- Damages for intentional torts or fraudulent conduct. 11 U.S.C. § 523(a)(2), (a)(4), & (a)(6).

See 11 U.S.C. §523 for a full list of non-dischargeable debts.

What are the advantages of bankruptcy?

Though there are several long-term financial consequences when filing for bankruptcy, there are also several advantages to consider.

- The bankruptcy discharge **totally eliminates many types of debts**. For a list of non-dischargeable debts see Section V. A. 1. (p. 8).
- Bankruptcy proceedings **stop almost all collection actions**. Specifically, many types of wage garnishment and liens on assets are stopped and the client may be able to recover monies levied during the 90 day period prior to the filing. 11 U.S.C. § 362.
- Bankruptcy **may automatically stay (delay) a foreclosure proceeding** on the client's property/home or any debt collection attempts. 11 U.S.C. § 362(a)(3)-(6).

Debtors who have had a **prior bankruptcy case** filed and dismissed in the last year are only protected by a 30-day automatic stay. Debtors who have had 2 or more cases pending and dismissed in the past year get no automatic stay at all. See 11 U.S.C. §§ 362(c)(3)-(4). However, debtors in these situations may request, by noticed motion, that the bankruptcy court either extend the 30-day stay or impose a stay, as applicable. 11 U.S.C. §§ 362(c)(3)(B), 362(c)(4)(B). This motion must be filed and heard within 30 days of the date that the bankruptcy case was filed.\

To file **a motion for stay in the Central District**, local rules mandate the use of Form F 4001-1.IMPOSE.STAY.MOTION. A mandatory form **order** should also be lodged with the court once the motion is decided: Form F 4001-1.IMPOSE.STAY.ORDER. These and additional forms may be found at the Central District website. http://www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms.

What are the disadvantages of bankruptcy?

Filing for bankruptcy is a serious decision. The client should be informed of the serious consequences and take time to balance the advantages with the disadvantages. Please be supportive of the client during this process.

What happens to the client's property?
One of the most significant disadvantages of bankruptcy is the loss of non-exempt property.

Exempt Property	**Non-Exempt Property**
• Primary residence; • Car, if used to get to work; • Reasonably necessary clothing; • Household appliances; • Jewelry, up to certain value; • Pensions; • A portion of unpaid but earned wages;	• A second car; • A second home or vacation home; • Cash, bank accounts, and stocks; • Family heirlooms; • Collections of stamps, coins, and other valuable items; and

• Damages awarded for personal injury; • Portion of equity in the debtor's home; • Tools of the debtor's trade or profession, up to a certain value; and • Public benefits	• Expensive musical instruments, unless the debtor works as a professional musician.

What happens to the client's credit?
Bankruptcies devastate the client's credit because they are visible to anyone who runs a credit check, and remain on the client's credit history for as long as 10 years. The ten years are counted from the date the client filed for bankruptcy. Filing for bankruptcy can prevent the client from being approved for anything that requires good credit.

How much does bankruptcy cost?
Bankruptcy proceedings may require ongoing representation by an attorney, which can be expensive. The average cost of filing for Chapter 7 bankruptcy is about $1,000. The average cost of filing for Chapter 13 bankruptcy can range from $4,000 to $10,000.

B. Credit Counseling

Credit counseling and debtor education are required before a discharge under the Bankruptcy Code may be granted. The purpose of counseling is to determine if there are any other ways the debtor can repay his debt without filing for bankruptcy. 11 U.S.C. §§ 109(h); 111(a)-(c).

When is credit counseling required?

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires debtors to earn **2 different certificates** to obtain discharge: a **Certificate of Counseling** (prior to filing for bankruptcy) and a **Certificate of Debtor Education** (after filing for bankruptcy but before the debt is discharged).

1) Certificate of Counseling: The client must show completion of credit counseling from an approved agency office during the 180 days prior to filing for bankruptcy by filing a Certificate of Counseling along with their *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). This applies regardless of the type of bankruptcy the client is seeking.

2) Certificate of Debtor Education: For Chapter 7 bankruptcy, the client must show completion of debtor education from an approved education provider within 60 days from the initial date of the § 341 Meeting of Creditors hearing. For Chapter 11 and 13 bankruptcies, the client must show completion of debtor education prior to making his last payment. Fed. R. Bankr. P. 1007(c). The Certificate of Debtor Education must be filed with the *Certification About a Financial Management Course* (Official Form 423).

Where can the client go to satisfy the counseling requirement?

To find an **approved credit counseling agency**, please visit the Department of Justice website at www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm. Approved credit counseling agencies that offer services in languages other than English may be found by using the drop down list search.

A **pre-bankruptcy counseling session** with an approved credit counseling organization should include an evaluation of the client's personal financial situation, a discussion of alternatives to bankruptcy, and a personal budget plan. A typical counseling session should last about 60 to 90 minutes, and can take place in person, on the phone, or online.

The counseling organization is required to provide the counseling for free for people who can't afford to pay. If the client can't afford to pay a fee for credit counseling, they should ask for a **fee waiver** from the counseling organization before the session begins. Otherwise, the client may be charged a fee for the counseling. The counseling organization must discuss any fees before starting the counseling session.

Once the client completes the required counseling, the client must **get a certificate as proof of completion**. Credit counseling organizations may not charge an extra fee for the certificate.

Where can the client go to satisfy the debtor education requirement?

To find an **approved debtor education provider**, please visit the Department of Justice website at www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm. Approved education providers that offer services in languages other than English may be found by using the drop down list search.

A debtor education course by an approved provider should include information on developing a budget, managing money, and using credit wisely. Debtor education can take place in person, on the phone, or online. The education session might last about two hours, and the fee is between $50 and $100. If the client can't afford the session fee, the client may request a fee waiver from the debtor education provider.

Once the client has completed the required debtor education course, the client should receive a certificate as proof of completion. Unless the debtor education provider told the client that there would be a fee for the certificate before the education session began, the client cannot be charged an extra fee for it.

C. Filing for Bankruptcy

Is the client barred from filing for bankruptcy?

If the client has **previously filed for bankruptcy**, please review the time constraints below; the client may be barred from filing a new bankruptcy case.

For Chapter 7 Bankruptcy:
If the client wants to file for Chapter 7 bankruptcy, at least 8 years must have passed since the date of any previous Chapter 7 filing where the client received a discharge. 11 U.S.C. § 727(a)(8). Additionally, 6 years must have passed since any previous Chapter 13 filing where the client received a discharge, unless:

- The client paid the unsecured creditors from the first case in full, OR
- The client paid at least 70% of the unsecured claims in the first case and the Chapter 13 payment plan was proposed in good faith. 11 U.S.C. § 727(a)(9).

For Chapter 13 Bankruptcy:
If the client wants to file for Chapter 13 bankruptcy, at least 4 years must have passed since any previous Chapter 7 filing where the client received a discharge, and 2 years since any prior Chapter 13 filing where the client received a discharge. 11 U.S.C. § 1328(f).

The client may also be barred from filing a new case for 180 days after a case is dismissed if the dismissal:

- Was because of **willful failure to abide by an order of the court** or to properly prosecute the case; or
- Was **at the client's request** after a creditor requested relief from the automatic stay.
- See 11 U.S.C. § 109(g).

Which bankruptcy proceeding is more appropriate for the client?

If the client is seriously considering filing for bankruptcy, it is important that he be informed about Chapter 7 and Chapter 13.

Chapter 7 – A trustee is appointed to take over the debtor's property. Any property of value will be sold or turned into money to pay their creditors. The debtor may be able to keep some personal items and possibly real estate depending on the law of the State where the debtor lives and applicable federal laws.

Chapter 13 – The debtor can usually keep their property, but they must earn wages or have some other source of regular income and they must agree to pay part of their income to their creditors. The court must approve the repayment plan and budget. A trustee is appointed and will collect the payments from the debtor, pay the debtor's creditors, and make sure the debtor lives up to the terms of the repayment plan.

Chapter 7	Chapter 13
• Mandatory credit counseling within 180 days before filing bankruptcy petition. • All non-exempt assets must be surrendered for liquidation and distribution (debtor retains only exempt assets). • Most pre-petition debts are discharged (extinguished) with noted exceptions (e.g., student loans, support obligations, taxes). • Money from liquidation is split among creditors. • The Means Test is applied; if the debtor makes more than the median income, he may be ineligible for Chapter 7. • If the debtor keeps up with mortgage payments, house ownership may be preserved depending on exemption status and marital ownership law status. • The debtor's vehicles may be taken by creditors unless they are necessary for work, or other payment arrangements are made. • Record of bankruptcy remains on credit record for up to 10 years from the date of filing. • The portion of the debt repaid will depend on the value of non-exempt assets surrendered.	• Mandatory credit counseling within 180 days before filing bankruptcy petition. • Debtor files a proposed payment plan for a proposed period ranging from 3 to 5 years. • Payments are made from disposable income; debtor retains assets. • Debtor must owe less than $394,725 in unsecured debt AND less than $1,184,200 in secured debt (limits may change; see 11 U.S.C. § 109(e) for current amounts). • All or a portion of the debts are paid off over an allotted period of time. • Debts are discharged upon successful completion of the payment plan. Some debts (i.e., student loans, child support), however, will not be discharged. • The home and any vehicles will likely be preserved if the payment plan is successfully completed; there are some exceptions. • If payment plan is not completed, non-exempt assets are sold to pay creditors (as in Chapter 7). • May allow payment of less than the full amount of debt owed. • Record of bankruptcy may remain on credit report for up to 10 years from the date of filing. Note, some creditors will report a Chapter 13 bankruptcy for only 7 years. • Creditors often prefer to see this type of bankruptcy as it is more likely that a significant portion of the debt will be paid back.

Absent bad faith or abuse of the bankruptcy process, a debtor generally has the right to **convert his or her case to another chapter** at any time, as long as he or she is eligible to be a debtor under that chapter.

Is the client considering filing for Chapter 7 bankruptcy?

To file for Chapter 7, the client must satisfy the **Means Test.** First compare the client's current monthly income against the median income for a family of the same size in the same state. If the client's income is less than, or equal to, the median, the law presumes that he is eligible for Chapter 7 bankruptcy. 11 U.S.C. § 707(b)(2). Visit https://www.justice.gov/ust/means-testing for details about means testing.

If the client meets CLA-LA's income requirement, then the client's household monthly income is below the California State Median, meaning he automatically passes the Means Test and is eligible for Chapter 7.

If the client's income **exceeds the state median**, the client still might be able to file Chapter 7 if the client's income is **not enough to pay his/her current living expenses and to meet the repayment requirements of Chapter 13.** The Internal Revenue Service's (IRS) **Allowable Living Expense National Standards** are used as the guideline for determining allowable household expenses for food, housekeeping supplies, clothing, personal care and some miscellaneous items, and to determine how much money the debtor has left over each month to repay the debts.

REFER OUT

If the client files under Chapter 7, he or she must provide **a copy of their latest tax return** or the case will be dismissed. If the client has not submitted his/her income taxes, the client must do so before he/she will be allowed to file bankruptcy.

Even if the client files for Chapter 7, the bankruptcy judge will determine if the client actually has enough income to repay the debts under a Chapter 13 filing and would therefore be abusing the system by filing Chapter 7.

Is the client considering filing for Chapter 13 bankruptcy?
Chapter 13 bankruptcy is a reorganization proceeding where the client is required to repay the debt per an agreed upon payment plan. The client must have income over the next 3 to 5 years. For Chapter 13, the client must provide tax returns for the past four years.

If the client has enough income to repay his debt, please speak to the Executive Director about referring the client to a private attorney or another legal-aid organization.

What forms are required to file for bankruptcy?

A client must file several forms in order to be eligible for bankruptcy. Once the forms are filed and accepted by the bankruptcy court, an automatic stay is enacted, protecting the debtor from collection attempts.

- B1 Voluntary Petition Form - www.uscourts.gov/forms/bankruptcy-forms/voluntary-petition.
- A list of all creditors and the amount and nature of their claims.
- Tax returns.
- Income documentation.
- Valuation of real estate.
- Vehicle registration.
- Retirement and bank accounts.
- Miscellaneous documents (i.e. special circumstances affecting bankruptcy, such as paying child support).

What is "reaffirmation" of debt?

The client has the option to **sign a written agreement to "reaffirm" a debt**. If the client chooses to reaffirm, the client **remains legally obligated to pay the debt** despite bankruptcy.

Reaffirmation is always optional. It is not required by bankruptcy law or any other law. If the client is thinking about reaffirmation, the first question should always be whether the client can afford the monthly payments.

Reaffirmation agreements must be **voluntary**; must not place **too heavy a burden** on the client or the client's family; must be in the client's **best interest**; and can be **canceled** anytime before the court issues the discharge or within 60 days after the agreement is filed with the court, whichever gives the client the most time.

II. Debt Collection

When clients are struggling with debt, they may find that any collection attempt is aggressive and unwarranted. However, **debt collectors are authorized to contact the client as long as their collection practices do not violate the law**. Specifically, the Fair Debt Collection Practices Act (FDCPA) provides legal protection from abusive debt collection practices. 15 U.S.C. § 1692(e). Should there be a finding of harassment, the client can file a lawsuit against the debt collector for actual damages and up to $1,000 additional damages. 15 U.S.C § 1692k(a)(2)(A).

Clients should be able to contact and stop the debt collectors from engaging in harassment. If debt collectors are not willing to negotiate, please speak with the Executive Director about referring the client to a private attorney or refer the client to another legal-aid organization.

What are debt collectors allowed to do?

Collect money from the debtor's wages
If the debtor is employed, the creditor can get an Earnings Withholding Order to garnish the wages until the debt is paid. The creditor has the right to collect up to 25% of the amount over the federal minimum wage that the debtor earns (as long as it is not exempt under other rules). A wage garnishment does not work against someone who is self-employed.

If the creditor gets an Earnings Withholding Order and sends it to the debtor's employer, the debtor has **10 days to file a Claim of Exemption** (Form WG-006).

For more details of how to ask for a claim of exemption for wage garnishments, see http://www.courts.ca.gov/1327.htm#acc13840.

Collect money from debtor's bank account
The creditor can get a levy on the debtor's bank account. The creditor will need to know the branch where the account is kept and, usually, the account number as well.

The debtor has **10 days to oppose the bank levy** before the sheriff sends the money to the creditor. The debtor has to file a Claim of Exemption (Form EJ-160) to try to stop this.

For more details of how to ask for a claim of exemption for non-wage garnishments, see http://www.courts.ca.gov/1327.htm#acc13841.

Put a lien on the debtor's real property
The creditor can file a lien on the debtor's property. This can convert the judgment from an unsecured debt to a secured debt. This way if the debtor tries to sell or refinance the home, the creditor can get paid the judgment plus accrued interest from the escrow.

If the creditor chooses not to wait for the debtor to sell or refinance the property, the creditor can try to "foreclose" on the judgment lien. This means that the creditor forces the debtor to sell the property and pay what the debtor owes with that money. This only works when there is enough equity in the property to pay all the liens as well as the costs of foreclosure.

Put a lien on the debtor's personal property
The creditor can have the sheriff take the debtor's personal property and sell it at public auction to pay the debt.

What are the types of income that the debt collector cannot go after?

- Social Security benefits. 42 U.S.C. § 407(a).
- Supplemental Security Income benefits. 42 U.S.C. § 407(a).
- Welfare benefits (ADC, home relief, or temporary assistance).
- Pension.
- Veterans benefits. 38 U.S.C. § 5301(a)(1).
- Workers and unemployment compensation.
- Life, accident, and health insurance proceeds.

When are debt collection attempts considered harassment?

If the client believes that the debt collector's conduct is harassment, please advise the client to gather as much evidence as possible by keeping a phone log or diary of information including: dates and times of

all phone calls, name of the collection agency, name of the person the client spoke with, and specific details about the violation. See 15 U.S.C. §§ 1692b – 1692f.

The following are examples of conduct that tend to show harassment:

- Calling other than from 8:00 am to 9:00 pm local time, 15 U.S.C. § 1692c(a)(1);
- Calling at work (if the client's employer does not allow it), or calling anyone other than the client including client's spouse, attorney, or co-debtor, 15 U.S.C. §§ 1692c(a)(3), 1692c(b);
- The debt collector may call the client's spouse, attorney, or co-debtor if it is for the sole purpose of finding the client's location. 15 U.S.C. § 1692b.
- Making false, deceptive, or misleading representations, 15 U.S.C. § 1692e;
- Failing to identify themselves as debt collectors, 15 U.S.C. § 1692d(6);
- Adding unauthorized interest, fees, or charges to the debt, 15 U.S.C. § 1692f(1);
- Using profane language or threatening violence, 15 U.S.C. § 1692d(1)-(2); and
- Making continuous calls with intent to annoy, abuse, or harass any person at the called number. 15 U.S.C. § 1692d(5).

When are debt collection attempts considered fraudulent?

Debt collection attempts are considered to be fraudulent when debt collectors make false representations regarding:

- The amount owed.
- That the person is an attorney.
- False threats to have the client arrested.
- Threats to do things that cannot legally be done.
- Threats to do things that the debt collector has no intention of doing.

Does the client need help stopping unlawful debt collection attempts?

Negotiate: Help the client write a cease and desist letter to stop the debt collector from continuing harassing conduct. The client may also file a complaint with the Federal Trade Commission (FTC) or the California Attorney General.

- FTC: www.ftccomplaintassistant.gov
- California Attorney General's Office: oag.ca.gov/contact/consumer-complaint-against-business-or-company.

Litigate: Speak with the Executive Director about referring the client out to another attorney or legal aid organization as CLA-LA does not have the resources to provide on-going assistance at this time.

III. Credit Card & Judgment Debt

Is the credit card debt collectable?

If the debt appears to be valid, the debt collector cannot seek to recover the debt without a copy of the **original written contract**. Cal. Civ. C. § 1700.

Ask the client whether he received any kind of **proof of his debt**. If no, the client does not have to make payments until the creditor shows that the client is legally liable for paying the debt. See 15 U.S.C. § 1692g. If, however, the client knows the debt is valid, it may be better for him to work out a payment plan before the debt collector offers this evidence.

If there has been no lawsuit filed, the client has two options:

1. Negotiate a payment plan; or
2. Wait for the statute of limitations to run. Please advise the client that this is a risky option.
    - Oral contracts are not enforceable 2 years after the breach and written contracts are not enforceable 4 years after the date of breach. See Cal. Civ. Proc. §§ 337; 339.
    - The date of breach is the date the client first stopped paying. More often, the statute of limitations will begin to run after the account is written off – about 90 days after the last payment was due.
    - The statute is tolled when the client leaves the state or is imprisoned. Cal. Civ. Proc. § 351.
    - *Conversations, either written or oral, with the creditor after payment has stopped MAY RESTART the statute of limitations.*

If a lawsuit is filed before the statute of limitations runs, the client must either negotiate to pay his debt, defend against the complaint, or file for bankruptcy. Please note that often the debt can be negotiated to a lower amount if the case is litigated and the trial date nears.

Is there a judgment or lawsuit against the client?

Many of our clients with debt issues come after judgments have already been entered. These judgments show up on their credit reports. If the client receives notice of a pending lawsuit, advise the client to respond immediately! If you are uncomfortable with drafting an answer, please speak with the Executive Director about referring the client to a private attorney or refer the client to another legal resource for assistance.

If the debt collector prevails and obtains a money judgment, it will last for **10 years**. Money judgments can be perpetually renewed. Cal. Civ. Proc. § 337.5; 683.020; 683.110

Is there a default judgment against the client?
For information on when and how the client may vacate a default judgment, see the **Small Claims Appeals** section. *Note: the procedure for vacating a levy judgment is different for non-small claims actions.*

What impact does a judgment have on a client's credit score?
Public records such as judgments, bankruptcies, and tax liens are included in credit reports and will factor into the client's FICO credit score. Over time, these records will have less effect on the credit score, but some records can remain on the credit report for up to 10 years (i.e., Chapter 7 and 11 bankruptcies).

Adverse judgments, in small claims court for instance, and Chapter 13 bankruptcies remain on a credit report for **7 years** from the date filed. For more information visit myfico.com.

Has the client paid the judgment in full?
If the client states that he has already paid the judgment in full, please confirm that a record of such payments has been properly filed with the court.

If the client has a case or judgment in Los Angeles County you may be able to determine the status of the client's case and other useful information by visiting www.lacourt.org/casesummary/ui/. The client's case number is required.

To confirm payment of the judgment, check the client's credit report to see if the judgment reads "Paid." A credit report may be obtained at annualcreditreport.com; it can be obtained for free once each year.

If the client has made payments to the debt collector directly rather than through the court, assist the client in filling out a Request for Court Order and Answer (Form SC-105).

- Upon filing, the court will give the creditor 10 days to respond, either confirming or disputing that the judgment has been paid. Cal. Rules of Ct. 3.2107(b).
- The client must attach a blank copy of an Order on Request for Court Order (Form SC-105A) and all documentation (i.e., money orders, check copies, receipts) that proves payment.

If the creditor *disputes* that payment has been made, a hearing will be scheduled. If the creditor *does not respond*, on the 11th day the case will be submitted to a judge for review, and the judge may change the status of the judgment to paid.

IV. Student Loans

If the client is not able to pay his student loans, there are not many options available as payment is almost always required. For example, bankruptcy is usually not a viable option because bankruptcy does not automatically discharge federal student loans.

Discharge: Discharge is a **rare** exception awarded only if the debtor can show that denial of discharge would cause "undue hardship". See 11 U.S.C. § 523(a)(8); see also 34 C.F.R. §§ 673; 674.49; 682.102(a); and 685.212(c). Certain types of cancellations are available to military personnel, teachers, nurses, child care providers, or borrowers affected by the closure of a school.

Deferral: There are a few limited options, however, for a client to **defer** student loan payments. After reviewing the conditions, have the client contact their loan servicer if they believe they qualify. If the client has a Federal Perkins Loan, they must apply to the school that made the loan or contact the loan servicer that the school has designated. Provisions differ depending on the type of loan the client has. The client can view their loan information by logging in to their account at www.studentaid.ed.gov.

A. Deferral

Has the client tried to change payment options?

If yes, find out what happened and strategize about other possible payment options. The client can change his or her payment option at any time for free. There are **eight different repayment plans** and each has different monthly payment and time frame. See https://studentaid.ed.gov/sa/repay-loans/understand/plans for more details.

If the client has not yet tried to change their payment plan, the client should contact the loan servicer as soon as possible to negotiate a more manageable plan.

- The client can find his specific loan servicer by going to www.nslds.ed.gov/nslds_SA.
- The client can use the Repayment Estimator to get an early look at which plans the client may be eligible for and see estimates for how much the client would pay monthly and overall.

If the client has multiple **federal** student loans, he or she can **consolidate** them into a single Direct Consolidation Loan. This may simplify repayment if the client is currently making separate loan payments to different loan holders or servicers, as the client will only have **one monthly payment** to make. See https://studentaid.ed.gov/sa/repay-loans/consolidation for more details.

Is the client experiencing economic hardship?

If the client is experiencing economic hardship, there are 3 ways to deal with federal student loans, but the client must be current on his loan payments before applying for any of the following options. See 34 C.F.R. §§ 674.33(d); 674.34(d)-(e); 682.210(h); 682.211; 685.204(f)-(g); 685.205.

To modify repayment of student loan debt:

- **Deferral** - The client can request a deferral of up to 3 years for economic hardship or unemployment. While in deferral, no payments are due, but unsubsidized loan accounts still accrue interest.
- **Discretionary Forbearance** - The lender has discretion to temporarily cease payments during times of economic hardship or illness. No payments are due, but the loan accounts still accrue interest.
- **Mandatory Forbearance** - The client's loan servicer is required to grant forbearance for 12 months and up to 3 years if the total student loan payments equal 20% or more of the client's total monthly income. No payments are due, but the loan still accrues interest.
    - To obtain a Mandatory Forbearance Request Form, visit ifap.ed.gov/dpcletters/attachments/GEN1214SLDB.pdf

B. Discharge

Is the client eligible for total and permanent disability (TPD) discharge?

The client may be eligible for TPD discharge of a federal student loan if the client is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that:

- Has lasted for a continuous period of not less than 60 months; or
- Is expected to last for a continuous period of over 60 months; or
- Can be expected to result in death. See 34 C.F.R. § 674.51(aa)(1).

If the client is a veteran determined to be disabled by Veterans Affairs (VA), the eligibility criteria for a TPD Discharge is a little more lenient. Veterans who qualify must show:

- A service-connected disability(ies) that is 100% disabling, or
- Total disability based on an individual un-employability determination. See 34 C.F.R. § 674.51(aa)(2).

If eligible for TPD discharge, the client should **apply to discharge** his William D. Ford Federal Direct Loan (Direct Loan), Federal Family Education Loan (FFEL), Federal Perkins Loans, or Teacher Education Assistance for College and Higher Education Grants (TEACH). 34 C.F.R. § 674.61(b); www.disabilitydischarge.com/TPD-101/.

Before filing an application to discharge, the client must first **contact the Nelnet Total and Permanent Disability Servicer**. The Nelnet TPD Servicer will provide additional information, verify the client's records for eligibility, and contact loan holders to suspend collection for up to 120 days. To inform the Nelnet TPD Servicer:

- Call (888) 303-7818 from 8:00 am to 8:00 pm EST.
- Email disabilityinformation@nelnet.net.
- Start the TPD discharge application online at secure.disabilitydischarge.com/registration.

For more information, see https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/disability-discharge.

Is the client eligible for public service loan forgiveness?

If the client is employed in certain public service jobs and has made 120 payments on their direct loans (after October 1, 2007), then the remaining balance they owe may be forgiven. However, only payments made under certain repayment plans may be counted toward the required 120 payments. The client also must not be in default on the loans that are forgiven. For more information, visit www.studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service.

Is the client eligible for Perkins Loan cancellation and discharge?

The following federal Perkins Loan program cancellations apply to individuals who perform certain types of **public service** or are employed in certain occupations.

For each complete year of service, a percentage of the loan may be cancelled. The total percentage of the loan that can be cancelled depends on the type of service performed. Depending on the type of loan the client has, and when that loan was taken out, they may be eligible to cancel part of or their entire loan if they have served as one of the following:

- Volunteer in the Peace Corps or ACTION program (including VISTA);
- Teacher;
- Member of the U.S. armed forces (serving in area of hostilities);
- Nurse or Medical Technician;
- Law enforcement or corrections officer;
- Head Start worker;
- Child or family services worker; or
- Professional provider of early intervention services.

For more information, see https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/charts#perkins-loan-cancellation.

Is there a death discharge?

If the borrower dies, **their federal student loans will be discharged**. If the client is a parent PLUS loan borrower, then the loan may be discharged if they die, or if the student on whose behalf they obtain the loan dies. The loan will be discharged if a family member or other representative provides a **certified copy of the death certificate** to the school (for a Federal Perkins loan) or to the loan servicer (for a Direct Loan or FFEL Program loan). For more information, have the client contact their loan servicer.

For more information, see https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/death.

8. PROBATE & ESTATE PLANNING

Probate is a court-supervised process of **distributing the property or the "estate"** of a deceased person (decedent). If someone has passed away, the court will appoint an **estate representative**—an executor (if there is a will) or administrator (if there is no will) to settle the estate. The executor or administrator will make an account of all of the decedent's assets, be responsible for paying outstanding debts and, with the court's approval, distribute the remaining assets to the appropriate beneficiaries or heirs. The entire process typically takes between 9–18 months, although it can last several years.

CONTENTS

I. Exemptions From Probate

While an estate typically needs to go through probate if the decedent has property that needs to be distributed, there are certain circumstances that allow the decedent's property to be transferred to beneficiaries or heirs without going through the full probate process whether or not there is a will.

Are the assets exempt from probate?

Assets such as property held in **joint tenancy** or where the decedent designated a **"payable on death" beneficiary** are considered **non-probate assets** and do not need to go through probate to be distributed. If the client is the surviving joint tenant, the client is entitled to claim the asset regardless of what the will or trust says. See People v. Nogarr, 330 P.2d 858, 860 (Cal. Distr. Ct. App. 1958).

- **To claim real estate**, the client will need the following documents: (1) a Death of Joint Tenant Affidavit, which can be filled out with information from the property deed; (2) a certified copy of the decedent's death certificate, which can be obtained from the Department of Public Health by submitting the Application for Certified Copy of Death Record (Form VS-112); and (3) a

Preliminary Change of Ownership Report, which can be found at the County Recorder's Office or the County Assessor's Office. See Cal. Rev. & Tax. C. § 480.

- If the real estate is passing from a parent to a child or a grandparent to a grandchild, the client will need to complete a Claim for Reassessment Exclusion form, which can be found on the County Assessor's Office website.

- **To claim financial assets**, the client will need: (1) claim forms from the relevant financial institution; (2) a certified copy of the decedent's death certificate, which can be obtained from the Department of Public Health by submitting the Application for Certified Copy of Death Record (Form VS-112). See https://www.cdph.ca.gov/Programs/PSB/Pages/BirthDeathMarriageCertificates.aspx.

Is the client a beneficiary of a Transfer on Death Deed?

If the client is a beneficiary of a Transfer on Death Deed (TOD), the property passed to the client at the time of the grantor's death.

Please advise the client that the property is subject to debts accrued by the grantor during his/her life, and the personal representative can make a demand for restitution from the client up to **three years** after the grantor's death.

By accepting this gift, the beneficiary becomes **personally liable** to the estate for the grantor's outstanding debt up to the value of the property. Cal. Prob. C. §§ 5670-5676.

- If the client has **kept the property**, the client will be responsible for the property and any net income received from the property.
- If the client has **sold the property**, the client will be responsible for the fair market value of the property at the time of disposition, any net income received from the property prior to selling it, and 10% interest on the fair market value of the property.

If the grantor's estate was insolvent, the client may want to disclaim his/her interest in the property. The client must do so within **nine months** of the grantor's death.

Is the beneficiary a surviving spouse or domestic partner?

The surviving spouse or the domestic partner can file a *Spousal or Domestic Partner Property Petition* (Form DE-221) to transfer the decedent's property See Cal. Prob. C. § 13500; www.courts.ca.gov/8865.htm.

- **If there is a will and the surviving spouse or domestic partner is the sole beneficiary,** then he/she can obtain all the property listed in the will.
- **If there is a will and there are other beneficiaries**, the spouse or domestic partner can only receive the property given to him/her in the will. All other property will most likely need to go through probate to be distributed to the other beneficiaries.
- **If no will exists**, then only the property that would pass to the spouse through intestate succession, usually limited to community property, would be transferred. See Probate without a Will section for more information on intestate succession.

Along with the *Spousal or Domestic Partner Property Petition* (Form DE-221), the spouse/domestic partner will need to prepare a *Notice of Hearing* (Form DE-120) and file it with the court to obtain a hearing date. After receiving the hearing date, the spouse/domestic partner will need to serve all interested parties with the *Spousal or Domestic Partner Property Petition* and *Notice of Hearing* at least **15 days** before the hearing date.

Advise the spouse/domestic partner to prepare a *Spousal Property Order* (Form DE-226) and file it with the court at least **four days** before the hearing. If the judge grants the petition, the judge will sign the order. Advise the spouse/domestic partner to ask the court clerk for a certified copy of the Order so that he/she can record the Order with the county recorder where the decedent's real property was located.

When using this procedure, **the spouse remains responsible for any debts of the decedent** up to the fair market value of the property calculated as of the date of the decedent's death.

Did the decedent have real property in California worth $50,000 or less?

If the decedent owned real property **worth $50,000 or less at the time of death**, the beneficiary may file an *Affidavit re Real Property of Small Value* (Form DE-305) with the court in the county where the decedent lived. The beneficiary must wait **6 months** after the decedent's death. If the estate is in probate, the beneficiary must get the executor or administrator's consent in writing, and all decedent's unsecured debts must be paid in full.

The affidavit must include a complete legal description of the real property, and the affidavit must be notarized. An appraisal by a probate referee must be completed and the probate referee must sign the *Inventory and Appraisal* (Form DE-160).

Along with the *Affidavit re Real Property of Small Value*, the beneficiary will need to include:

- The signed *Inventory and Appraisal*
- A certified copy of the death certificate
- A copy of the decedent's will, if one exists.

After filing the documents, the court will grant the beneficiary a certified copy of the affidavit. The beneficiary will need to record the certified copy in the office of the county recorder where the real property is located.

The beneficiary **assumes all liability for the debts** associated with the property.

Did the decedent have a small estate worth $150,000 or less?

Those using these procedures to transfer property in small estates without going through probate **will be liable for the decedent's debts**, up to the fair market value of the property based on the date of the decedent's death.

A beneficiary can **transfer the personal property** of a decedent if the total value of the decedent's estate was **$150,000 or less** on the date of his/her death. To determine the value of the decedent's estate, include all real and personal property and life insurance or retirement benefits that would be paid to the estate. **Exclude**: cars, boats, mobile homes, real property outside California, property held in trust or joint tenancy, property that passed directly to a spouse or domestic partner, and any debts or mortgages. See Cal. Prob. C. § 13050 for a complete list of exclusions.

If the estate is **currently in probate,** the beneficiary must get **written consent** from the personal representative of the estate to transfer the property.

If the estate includes any real property, the beneficiary will need a **probate referee** to make an appraisal of the real property in the estate and sign an *Inventory and Appraisal* (Form DE-160). The beneficiary can find a probate referee in the county where the real property is located on the CA State Controller's website: http://www.sco.ca.gov/eo_probate_contact.html. This document must be filed with the court before any of the estate property can be transferred.

Many institutions have their own affidavits. Advise clients to check with the institution or their local court's self-help center for a form or sample they can use. Also advise clients to ask if the institution needs to have the affidavit **notarized**.

In order to transfer only the personal property in the small estate, the beneficiary will need to wait at least 40 days after the decedent's death and then give the property holder:

- The *Small Estate Affidavit/Transfer of Personal Property Affidavit*
- A certified copy of the death certificate
- Proof that the decedent owned the property
- Proof of the beneficiary's or heir's identity
- If the estate included any real property, a copy of the *Inventory and Appraisal* (Form DE-160) signed by the probate referee.

For more information about personal property transfer by affidavit, see http://www.courts.ca.gov/10440.htm.

In order to transfer the real property (or the real AND personal property) worth $150,000 or less, heirs may file a *Petition to Determine Succession to Real Property and Personal Property* (Form DE-310) to ask the court to determine the order of their right to the property. If the estate is not in probate, they must wait **40 days** after the decedent's death. If the estate is in probate, they need the personal representative's consent. See Cal. Prob. C. § 13150-13152.

The heirs must also prepare and file with the court:

- The *Inventory and Appraisal* (Form DE-160) signed the by the probate referee.
- *Notice of Hearing* (Form DE-120), if required.

- Certificate of Assignment, if required.
- Original will, if required.

II. Probate with a Will

The person who has the will at the time of death must take the original will to the probate court clerk's office of a court in the county where the decedent lived **within 30 days** of the decedent's death. He/she must also send a copy of the will to the executor or person named in the will as a beneficiary if the executor cannot be found.

A. Does the client need to petition to begin probate?

The named executor (or a named beneficiary if the executor is not available) will need to file a *Petition for Probate of Will and Letters Testamentary* (Form DE-111) along with the decedent's will in order to begin the probate process. If the client is the named executor, advise him/her to call the court clerk to find out if additional forms need to be filled out and filed along with the petition.

After the petition is filed, the court clerk will assign a hearing date. Notice of the hearing will need to be given at least **15 days** before the hearing to interested parties through a *Notice to Petition to Administer Estate* (Form DE-121) in two ways:

- Publishing notice in a newspaper in general circulation in the city where the decedent lived. In LA County, the court clerk will deliver notice to the newspaper for publication.
- Mailing notice to all beneficiaries listed in the petition by an adult who is not the petitioner or a party to the case.

The petitioner will need to prepare the following forms for the judge to sign to formally admit the will into probate and appoint him/her as executor if the petition is approved:

- *Order of Probate* (Form DE-140 & Attachment MC-025).
- *Letters of Testamentary* (Form DE-150). The judge will sign this form confirming that the executor has been given legal authority to represent the estate.
- *Duties and Liabilities of Personal Representative & Confidential Supplemen*t (Forms DE-147 & DE-147S).

B. What are the executor's responsibilities?

The executor is responsible for beginning the probate process by **submitting a petition to the court**(see above). Once the petition is granted and the executor receives his/her Letters of Testamentary from the court, the executor is responsible for notifying interested parties, making an account of the decedent's assets, paying the decedent's outstanding debts, and--with the court's approval--distributing the remaining assets to the beneficiaries listed in the will.

Has the executor notified government agencies of the decedent's death?_____
Has the executor consolidated and inventoried the decedent's property?_____

Has the executor notified government agencies of the decedent's death?

The following government agencies must be notified of the decedent's death:

- **Director of Health Services**. If the decedent received health care under Medi-Cal or was the surviving spouse/registered domestic partner of someone who received health care, the executor must send a notice within **90 days of the decedent's death** to the Director of Health Services. Medi-Cal has four months to file a claim for repayment.
- **Director of the California Victim Compensation and Governments Claim Board**. If a beneficiary or heir is in prison, jail, or local correctional facility, the executor must give notice to the Director of the California Victim Compensation and Government Claims Board within **90 days of receiving his/her Letters of Testamentary**. The notice must include the name and location of the beneficiary or heir. The director has four months after receiving notice to collect outstanding restitution fines.
- **Franchise Tax Board**. Notice must be given to the Franchise Tax Board within **90 days of receiving the Letters of Administration**. The Franchise Tax Board has 18 months to file a claim.

Has the executor consolidated and inventoried the decedent's property?

The executor will need to consolidate and inventory the decedent's real and personal property. To do so, he/she will need to do the following:

- Prepare an *Application Appointing Probate Referee* (In Los Angeles County, Local Form PRO-001) and file it with the court. A probate referee will be appointed by the court and will appraise the real property owned by the decedent.
- Prepare an *Inventory & Appraisal* (Forms DE-160 & DE-161), have it signed by the probate referee who appraised the real property of the decedent, and file it with the court within **four months** of the Letters of Testamentary being issued.
- Apply for a tax ID number (TIN) in order to report income earned by the estate and open an estate bank account.
- Open an estate bank account in the name of the executor as the personal representative of the estate and transfer any cash from decedent's bank accounts.
- Provide a *Notice of Administration of Estate* (Form DE-157) to all known creditors. The executor can find out information regarding potential creditors by going through the decedent's mail and personal papers, checking the decedent's checkbook, contacting the issuer of each credit card the decedent had in his possession, and contacting all parties who provided medical care or assistance prior to the decedent's death.

Has the executor examined creditor claims?

Creditors typically have **four months** from the time the Letters of Testamentary were issued to the executor or **60 days** after the date a Notice of Administration is mailed to them, whichever is later to file a claim using *Creditor's Claim* (Form DE-172).

The executor will need to prepare an *Allowance or Rejection of Creditor's Claim* (Form DE-174) for each claim.

Claim Priority: (1) government, (2) administrative expenses, (3) secured creditors, (4) funeral and last illness expenses, (5) family allowance, (6) wage claims, (7) general debts.

Has the executor filed final personal income tax returns for the decedent?

The executor may have to file a final federal income tax return as well as a CA state income tax return on behalf of the decedent if the decedent received income in the year he/she died that met the income requirements for filing a return, paid taxes within the past fiscal year, or had taxes withheld from his/her paycheck within the past fiscal year.

- Information regarding federal income requirements can be found here: https://www.irs.gov/publications/p501/ar02.html.
- Information for filing CA state tax returns for decedents can be found here: https://www.ftb.ca.gov/individuals/faq/deceased.shtml.

Has the executor distributed the remaining assets to the beneficiaries?

- The executor will need to prepare and file a *Petition for Final Distribution* with the court (There is no court form, so this must be completed on pleading paper). The court clerk will then assign a hearing date for the petition.
- The executor will need to give notice of the hearing to all interested parties.
- The executor will need to also prepare an *Order for Final Distribution* for the judge to sign if he/she grants the petition. (There is no court form, so this must be completed on pleading paper).
- After the judge grants the petition and signs the order, the executor will need to transfer the assets and obtain signed receipts from all the beneficiaries of the estate.

Has the executor closed the estate?

After the executor has distributed all of the assets to the beneficiaries and obtained receipts, he/she will need to file an *Ex Parte Discharge for Final Discharge and Order* (Form DE-295) and the receipts with the court in order to be discharged from his/her duties.

C. Does the client want to contest a will?

In order to contest a will, a client must have standing--a personal financial stake in the outcome of the proceeding. Heirs, beneficiaries, children, a spouse, and creditors may have standing to contest the will.

Clients may suspect that a will is invalid because they were left out of the will, another sibling received more than they did, or they were treated more favorably in an earlier will.

Some valid reasons for contesting a will include:

- The testator (person who made the will) revoked the will.
- The testator lacked capacity when making the will.
- The testator made the will due to fraud, undue influence, or while under duress.
- The will was not properly executed.
- The will was forged.

A client can contest a will that has not yet been admitted to probate anytime until the hearing on the petition to probate the will. If the will has been admitted to probate, the client has **120 days** after the will has been admitted to contest it.

Clients have the burden of proving their objections to the will. There will be a hearing where clients will need to present evidence regarding their objections to the will. At the end of the hearing, the judge may accept or reject part or all of the contested will.

III. Probate without a Will

A. Who inherits from the decedent?

If the decedent died without a will, trust, or other estate planning instrument, how the decedent's property will be distributed is determined by statute. Heirs are the relatives who are entitled to inherit the decedent's property. How much a relative is entitled to inherit is based upon his or her relationship to the decedent.

If the decedent was married at the time of death, what the surviving spouse inherits is determined by the type of property at issue: community property, quasi-community property, or separate property.

Community property is any real or personal property, wherever situated, that is acquired by a married person during marriage. Cal. Fam. C. § 760.	The decedent's community property share goes to the surviving spouse.
Quasi-community property is all real property owned in CA and all personal property, wherever located, that would have been community property if the owner	The decedent's quasi-community property share goes to the surviving spouse.

had been a resident of CA at the time he/she acquired it.	
Separate property is any property acquired before marriage or property acquired after marriage by gift, bequest, devise, or descent. Cal. Fam. C. § 770.	The decedent's separate property is distributed in the following ways: • Surviving Spouse will receive **all** if decedent did not leave: children, parent, sibling, or niece/nephew. Cal. Prob. C. § 6401(c)(1). • Surviving Spouse will receive **1/2** if decedent leaves: (A) one child or issue of deceased child, or (B) no issue but parent(s) or parent's issue. Cal. Prob. C. § 6401(c)(2). • Surviving Spouse will receive **1/3** if decedent leaves: (A) more than one child, (B) one child and issue of one or more deceased children, or (C) issue of two or more deceased children. Cal. Prob. C. § 6401(c)(3).

If the decedent was not married at the time of death, the property will be distributed in the following order: (1) children, (2) issue of children, (3) parents, (4) siblings, (5) issue of siblings, (6) grandparents. Cal. Prob. C. § 6402.

B. Does the client need to petition to begin probate?

An heir, such as a spouse or close relative, can petition to start probate by filing a Petition for Letters of Administration (Form DE-111). The case must be filed in the county where the decedent lived. See http://www.courts.ca.gov/8865.htm for more information.

After the petition is filed, the court clerk will assign a hearing date. Notice of the hearing will need to be given at least **15 days** before the hearing to interested parties through a *Notice to Petition to Administer Estate* (Form DE-121) in two ways:

- Publishing notice in a newspaper in general circulation in the city where the decedent lived. In LA County, the court clerk will deliver notice to the newspaper for publication.
- Mailing notice to all heirs listed in the petition.

The petitioner will need to prepare the following forms for the judge to sign to appoint him/her as administrator if the petition is approved:

- *Order of Probate* (Form DE-140 & Attachment MC-025).
- *Letters of Administration* (Form DE-150). The judge will sign this form confirming that the personal representative has been given legal authority to represent the estate.
- *Duties and Liabilities of Personal Representative & Confidential Supplemen*t (Forms DE-147 & DE-147S).

C. What are the administrator's responsibilities?

The administrator is responsible for notifying interested parties, making an account of the decedent's assets, paying the decedent's outstanding debts, and with the court's approval, distributing the remaining assets to the heirs of the decedent's estate.

Has the administrator notified government agencies of the decedent's death?

The following government agencies must be notified of the decedent's death:

- **Director of Health Services**. If the decedent received health care under Medi-Cal or was the surviving spouse/registered domestic partner of someone who received health care, the administrator must send a notice within **90 days of the decedent's death** to the Director of Health Services. Medi-Cal has four months to file a claim for repayment.
- **Director of the California Victim Compensation and Governments Claim Board**. If an heir is in prison, jail, or local correctional facility, the administrator must give notice to the Director of the California Victim Compensation and Government Claims Board within **90 days of receiving his/her Letters of Administration**. The notice must include the name and location of the heir. The director has four months after receiving notice to collect outstanding restitution fines.
- **Franchise Tax Board**. Notice must be given to the Franchise Tax Board within **90 days of receiving the Letters of Administration**. The Franchise Tax Board has 18 months to file a claim.

Has the administrator consolidated and inventoried the decedent's property?

The administrator will need to consolidate and inventory the decedent's real and personal property. To do so, he/she will need to do the following:

- Prepare an *Application Appointing Probate Referee* (In Los Angeles County, Local Form PRO-001) and file it with the court. A probate referee will be appointed by the court and will appraise the real property owned by the decedent.
- Prepare an *Inventory & Appraisal* (Forms DE-160 & DE-161), have it signed by the probate referee who appraised the real property of the decedent, and file it with the court within **four months** of the Letters of Administration being issued.
- Apply for a tax I.D. number (TIN) in order to report income earned by the estate and open an estate bank account.
- Open an estate bank account in the name of the personal representative as the estate administrator and transfer any cash from decedent's bank accounts.

- Provide a *Notice of Administration of Estate* (Form DE-157) to all known creditors. The administrator can find out information regarding potential creditors by going through the decedent's mail and personal papers, checking the decedent's checkbook, contacting the issuer of each credit card the decedent had in his possession, and contacting all parties who provided medical care or assistance prior to the decedent's death.

Has the administrator examined creditor claims?

Creditors typically have **four months** from the time the Letters of Administration were issued to the administrator or **60 days** after the date a Notice of Administration is mailed to them, whichever is later to file a claim using *Creditor's Claim* (Form DE-172).

The administrator will need to prepare an *Allowance or Rejection of Creditor's Claim* (Form DE-174) for each claim.

Claim Priority: (1) government, (2) administrative expenses, (3) secured creditors, (4) funeral and last illness expenses, (5) family allowance, (6) wage claims, (7) general debts.

Has the administrator filed final personal income tax returns for the decedent?

The administrator may have to file a final federal income tax return as well as a CA state income tax return on behalf of the decedent if the decedent received income in the year he/she died that met the income requirements for filing a return, paid taxes within the past fiscal year, or had taxes withheld from his/her paycheck within the past fiscal year.

- Information regarding federal income requirements can be found here: https://www.irs.gov/publications/p501/ar02.html.
- Information for filing CA state tax returns for decedents can be found here: https://www.ftb.ca.gov/individuals/faq/deceased.shtml.

Has the administrator distributed the remaining assets to the decedent's heirs?

- The administrator will need to prepare and file a *Petition for Final Distribution* with the court (There is no court form, so this must be completed on pleading paper). The court clerk will then assign a hearing date for the petition.
- The administrator will need to give notice of the hearing to all interested parties.
- The administrator will need to also prepare an *Order for Final Distribution* for the judge to sign if he/she grants the petition. (There is no court form, so this must be completed on pleading paper).
- After the judge grants the petition and signs the order, the administrator will need to transfer the assets and obtain signed receipts from all the heirs of the estate.

Has the administrator closed the estate?

After the administrator has distributed all of the assets to the heirs and obtained receipts, he/she will need to file an *Ex Parte Discharge for Final Discharge and Order* (Form DE-295) and the receipts with the court in order to be discharged from his/her duties.

IV. Estate Planning

It is important for clients to consider what decisions should be made regarding their healthcare, children, dependents, and property in the event they can no longer make those decisions.

Does the client want to create a will?

If a client has no will and is interested in writing a will, consider whether the client's assets exceed $150,000, the client owns real property, there is a complex family situation, there are unique assets, or there are family members with special needs. If any of these situations apply, speak with CLA-LA staff about referring the client to a private attorney.

If the client has no will and does not have a complex situation, give the client the California Statutory Will Form and walk the client through the instructions of the form: http://www.calbar.ca.gov/portals/0/documents/publications/Will-Form.pdf.

Does the client want to create a living trust?

A living trust can help avoid a costly, time consuming, and public probate proceeding by **naming a trustee** who will be in charge of the client's assets. Unlike probate, a living trust is **not a matter of public record**, and a trustee may distribute assets without court supervision or approval, although it can be challenged if the trustee is not fulfilling his/her fiduciary duty. A living trust often costs less to manage and requires less time to complete than the probate process.

In addition to distributing assets after death, a living trust can establish someone else to manage the assets of the person who made the living trust (trustor) if the trustor **becomes incapacitated**.

Advise the client that **it is best for an attorney to assist with the creation of a living trust** because it is a legal document that will give a trustee significant control over the client's assets. Furthermore, if the living trust is done incorrectly, it could result in costly legal fees trying to fix the errors. If the client creates a living trust, their will should generally be updated or created with a corresponding "pour over" provision to ensure that the client's assets are distributed to the trust in the event an asset was mistakenly left out of the trust.

Who should consider a living trust? Typically, there is a greater benefit in having a living trust for those who have more than $150,000 in assets, especially in real estate.

Who does not need to create a living trust? Young married couples without significant assets and without children who intend to leave their assets to each other, individuals without significant assets (less than $150k), or individuals who want court supervision over their assets generally do not need a living trust.

Does the client want to create a revocable transfer on death deed to transfer real property outside of probate?

From January 1, 2016 until January 1, 2021, clients can transfer real property outside of probate by creating a revocable transfer on death deed for certain types of property: a single-family home or condominium unit, a single-family residence on 40 acres or less of agricultural land, or a multiple residence with no more than four residential dwelling units. Cal. Prob. C. § 5642.

Through the revocable transfer on death deed, the property passes to the beneficiary upon the death of the grantor. The client must have capacity to contract. He/she must identify the beneficiary or beneficiaries by their full name in the deed. The revocable transfer upon death deed **must be notarized**, and the deed must be recorded with the county recorder within **60 days** of execution.

The deed can be revoked prior to the grantor's death in the following ways: (1) by a recorded revocation; (2) by executing and recording a subsequent transfer on death deed or other deed transferring the property.

The property is transferred subject to encumbrances, and the beneficiary is personally liable for the grantor's other debts (up to the value of the property transferred). The grantor's personal representative can make a demand for restitution from the beneficiary up to **three years** after the grantor's death.

Does the client want to create a durable power of attorney for finances?

A durable power of attorney for finances can help avoid a complicated conservatorship proceeding. A client can **appoint an agent to handle his financial affairs on his behalf during his lifetime** by giving the agent a **durable power of attorney for finances**. An agent's authority can be effective immediately or only in the event of the client's incapacity. The "durable" aspect of the "power of attorney" allows the power of attorney to continue even after the client becomes incapacitated. Cal. Prob. C. §§ 4404; 4124.

Examples of tasks that an agent can do include: making bank deposits or withdrawals, trading stocks and bonds, paying bills, buying or selling property, hiring people to take care of the client, filing the client's tax returns, arranging the distribution of retirement benefits, negotiating and signing contracts, applying for benefits like SSI and Medi-Cal.

If the client does not have a Durable Power of Attorney for Finances and wishes to create one, the client can complete and file the Statutory Power of Attorney Form. See Cal. Prob. C. § 4401.

The statutory form is **effective immediately** (not just upon incapacity) and the powers granted to an agent by this form are **very broad**. A client should exercise great caution in executing a durable power of attorney that is effective immediately!

A client can cancel the Power of Attorney at any time by revoking it in writing or creating a new Power of Attorney. He/she must file the writing or new Power of Attorney with all financial institutions that had the old Power of Attorney because financial institutions can continue using the old Power of Attorney until they receive notice that the Power of Attorney has been revoked or the new Power of Attorney.

Recently, some financial institutions have been **reluctant to honor generic Power of Attorney forms**. Advise the client to check with their financial institutions to see if they have forms of their own that they would like the client to use.

Does the client want to create an advance healthcare directive?

An advance health care directive can help avoid a complicated conservatorship proceeding. An advance health care directive allows clients **to give instructions on their preferences** for health care or **to designate an agent** to make health care decisions on their behalf in the event they are not capable of making those decisions for themselves. It allows medical service providers to know what procedures to follow and helps family members understand what the client's wishes are.

The client may **revoke or modify all or any part of an advance health care directive *except* the designation of an agent** at any time in any manner that communicates the intent to revoke. This may include the client telling his/her physician or agent that he/she revokes the directive, signing a written revocation, signing a new advance health care directive, or destroying the original directive. The client may **revoke his/her designation of an agent** with a signed written statement or by personally informing his/her health care provider of the revocation.

If the client **has an existing advance healthcare directive**, check to see if all of the client's concerns and interests are met by the advance healthcare directive and that it is still in effect (older documents included expiration dates; newer ones do not).

If the client **does not have an existing advance healthcare directive** and wishes to create one, give the client the Advance Health Care Directive Form and walk him or her through its various parts: http://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/ProbateCodeAdvancedHealthCareDirectiveForm-fillable.pdf.

Advise the client to keep the original for his/her records, give a copy to his/her agent, and each healthcare provider.

9. SMALL CLAIMS

CLA-LA attorneys can educate clients about the process of dealing with a small claims action, help clients search for ways to negotiate their disputes, and find win-win solutions.

CLA-LA attorneys should first explain the basics of the small claims process – it is a simplified court proceeding that, generally, does not involve attorneys and involves claims of less than $10,000.

Before informing the client on how to proceed with a small claims dispute, CLA-LA attorneys should advise the client to negotiate or mediate with the other party before involving the court. Failure to try to peacefully resolve the dispute could cause the client to lose their case, even if there is merit to their claim.

CONTENTS

I. Jurisdiction and Eligibility

Can the client bring a small claims suit?

The following restrictions apply to clients looking to bring a case in small claims court:

- The client must be 18 years or older or an emancipated child.
- The claim cannot be for more than $10,000.
- The client cannot bring more than 2 claims over $2,500 in a calendar year. There is no limit for claims less than $2,500.

Note: the client can only sue a guarantor for up to $6,500, or $2,500 if the guarantor does not charge for their guarantee. A guarantor is a person or company that promises to be responsible for what another person owes.

Is the claim within the applicable Statute of Limitations?

The client's lawsuit must be filed within the Statute of Limitations. When the statute of limitations runs out, the claim is usually no longer valid. The Statute of Limitations for common types of legal disputes are listed below.

- **Personal Injury:** The claim can be filed up to 2 years from the date the client got injured
- **Spoken Agreements:** The claim can be filed up to 2 years from the date the agreement was broken
- **Written Agreements:** The claim can be filed up to 4 years from the date the agreement was broken
- **Property Damage:** The claim can be filed up to 3 years from the date the property was damaged
- **Fraud:** The claim can be filed up to 3 years from the date the client found out about the fraud. Fraud is when the client loses money or property because someone lied to them or tricked them on purpose.
- **Government or Public Agency:** Generally the client has 6 months to file a claim with an agency. Suing a government or public agency is filled with special rules that are explained in greater detail in the Suing A Government Or Public Agency section.

II. Mediation and Settlement

Does the client need help attempting a settlement with the other party?

In order for the client to proceed with a small claims case, they must first prove that they have already asked the other side for payment. The only exception to this requirement is if the client has a good cause showing for not asking for payment.

Sending a well written demand letter is often all that the client will need to settle a dispute. A firm and strong request in a letter that lays out the reasons why the other party owes the client money and says that if the issue is not satisfied, the client plans to go to small claims court can have a big effect. The other party will realize that the client is serious about the case and intends to spend time and energy pursuing it. The threat of a lawsuit and serious efforts by the client in pursuing the money may persuade the other party to settle before the courts are involved.

The California Courts Self-Help website has a **demand letter generator** that can help the client draft a letter requesting payment. Please walk the client through the demand letter generator and make any necessary additions or edits. The generator can be found at http://www.courts.ca.gov/11145.htm.

If the client is the plaintiff in a case that has already been filed, the client should also have the case dismissed without prejudice. Please help the client prepare a Request for Dismissal (Form CIV-110).

Has the client attempted to settle and now needs help attempting to mediate?

If the client and the other party have failed to settle their dispute, they may be able to find common ground in mediation. **The client can ask the other side to mediate before or after they have filed a small claims court case.** In mediation, the client and the other side meet with a neutral person, a mediator, who is specially trained to help people resolve their disputes without having to go in front of a judge. In mediation, the client and the other party work together to find a solution, instead of having the judge make a decision.

The mediator will not force an agreement. Any agreement reached during mediation will be at the complete discretion of the client and the other party. If no agreement is reached, the client can still proceed with their small claims case and go in front of a judge. There is nothing to lose by trying mediation, and there is a lot to gain. Additional benefits of mediation are listed below.

BENEFITS OF MEDIATION

1. During the court hearing, the client only has about 5 or 10 minutes to present their case. In mediation, they have **as long as needed** to talk about the dispute.
2. Court hearings are open to the public and everything said to the judge will be heard by everyone who is sitting in the courtroom. Mediation is **confidential and private**, so what is said in mediation cannot be used against the client in court later.
3. A judge has to apply the law to the facts of the case and take into account only those facts that the law considers relevant. In mediation, the client can talk about **non-legal issues** that may not be directly related to their legal claim but are very important to them and how they feel about the dispute.
4. A judge usually has to make a decision about money, and whether one side owes the other money. In mediation, the parties can reach an agreement that **goes beyond money** and can include, for example, giving one side a chance to fix a problem, return property, or apologize. In mediation, there is more room to create an agreement that appeals the parties.
5. Different types of cases have different deadlines for filing. If the client files a claim in court after the deadline for his/her type of case has passed, the judge will have to apply the law and the client will lose their case. But, the client can still resolve the case in mediation, since the client, the other side, and the mediator have **more flexibility** than the judge and can make an agreement beyond what the law requires.
6. Mediation can be very helpful in disputes between neighbors and family members because of the importance of **maintaining good relationships** between the parties.
7. When the judge makes a decision, at least one side usually does not like the judge's order, and often neither side is happy. In mediation, both sides usually agree on the outcome which they all accept. **Mediated agreements are often more likely to be followed than a court order** that is imposed by the judge.
8. If the client wins in court, getting paid can be very difficult and they may have to spend more money and time. If they reach an agreement through mediation, they will not need more court hearings, and the other side is more likely to pay because they were part of reaching that agreement and had a chance to really be involved in the resolution of the dispute.

9. If the client is the defendant and loses in court, the court will enter a judgment against him/her, which will show on his/her credit report **and could hurt his/her credit for years**. In mediation, the client can reach an agreement with the plaintiff and there will not be a court judgment entered against him/her, so his/her credit will not be affected.

Where can the client obtain mediation services?

If the client is prepared to try mediation, he/she can ask the court's **small claims mediator** or the **small claims court clerk** for a recommended mediation program. The client can also contact one of the following non-profit dispute resolution programs in Los Angeles County:

Asian Pacific American Dispute Resolution Center
Charles Chang, Executive Director
1145 Wilshire Boulevard
Los Angeles, CA 90017
TEL: (213) 250-8190

California Academy of Mediation Professionals
Wendy Wright, Director
16501 Ventura Blvd., Suite 606
Encino, CA 91436
TEL: (818) 377-7250

California Conference for Equality and Justice
Danielle Nava or Jose Gutierrez
444 West Ocean Blvd, Suite 940
Long Beach, CA 90802
TEL: (562) 435-8184

California Lawyers for the Arts
Arts Arbitration and Mediation Services
Alice Reeb, Associate Director or
Alma Robinson (SF), Executive Director
1641 18th Street
Santa Monica, CA 90404
TEL: (310) 998-5590

Center for Civic Mediation
Andrew Culberson, Director
1055 West 7th Street, 27th Floor
Los Angeles, CA 90017
TEL: (213) 896-6533

Center for Conflict Resolution
Chris Welch, Director
7806 Reseda Blvd.
Reseda, CA 91355
TEL: (818) 705-1090 or
(800) 572-9017

Centinela Youth Services
Jessica Ellis, Director
11539 Hawthorne Blvd., Suite 500
Hawthorne, CA 90250
TEL: (310) 970-7702

City of Norwalk, Dispute Resolution Program
Veronica Garcia, Supervisor
11929 Alondra Blvd.
Norwalk, CA 90650
TEL: (562) 929-5603

Korean American Coalition, 4.29 Center
Chris Lee, Executive Director
3727 W. 6th St., Suite 515
TEL: (213) 383-4290

Los Angeles County Department of Consumer Affairs
Caroline Torosis
500 West Temple Street, Room B96
Los Angeles, CA 90012
TEL: (818) 705-1090 or
(213) 974-9415

The Loyola Law School Center for Conflict Resolution
Mary Culbert, Director
800 South Figueroa Street, Suite 1140
Los Angeles, CA 90017
TEL: (213) 736-1145

Office of the Los Angeles City Attorney
Dispute Resolution Program
200 North Spring Street, 14th Floor
Los Angeles, CA 90012
TEL: (213) 978-1880

III. Suing a Government or Public Agency

To be able to sue a government or public agency in small claims court the plaintiff must prove the following:

1. The plaintiff filed a claim with that agency, and
2. The agency rejected the claim or has not responded within 45 days after filing the claim.

Be sure to advise the client that they **cannot sue a federal government agency** in small claims court.

Filing A Claim With A Government Agency

The deadline to file a claim with the government agency is as follows:

- **Personal Injury or Property Damage**: the plaintiff has **6 months** to file from the date of injury or damage
- **Contracts**: the plaintiff has **1 year** from the time the contract was broken to file

To present a claim to the government agency, the client must retrieve an official form from the agency. Dependent on what government or agency the claim is against, the client may retrieve the forms as follows:

- **County Government**: If the claim is against a county government, retrieve the forms from the county clerk.
- **City Government**: If the claim is against a city government, retrieve the forms from the city clerk.
- **State of California**: If the claim is against the state of California, contact the Victim Compensation and Government Claims Board. More information is available online at http://www.vcgcb.ca.gov/docs/forms/claims/GCClaimForm.pdf.

Rejected Claims

If the agency denies the claim or if it has not responded after 45 days, the client can sue in small claims court.

The client has **6 months** from the date the written notice of rejection of their claim was personally delivered or deposited in the mail to file their small claims case. If the client received

no response from the public agency, then he/she has **2 years** from the day the incident occurred to file his/her small claims case.

The process of suing a government agency is the same as any other case in small claims court. The defendant will be the public agency the claim was filed against. More information on how bring about a small claims case can be found in the IV. Plaintiffs section.

IV. Plaintiffs

The general process for suing someone in small claims court is outlined below. Additionally, the client may contact the small claims advisor Monday through Friday from 8:00 AM to 4:30 PM. The client can call the small claims advisor at (800) 593-8222 or online at dca.lacounty.gov. We have also created client instructions (available here) to help plaintiffs prepare for their small claims hearing.

Has the client asked the defendant for payment?

In order for a client to begin a small claims case, the client must first show the court that he/she has **already asked the defendant for payment**. The client will have to tell the court how he/she previously asked for payment. For more information on asking the defendant for payment before bringing a small claims case, refer to the II. Mediation and Settlement section.

Does the client need help finding the right court?

To begin a small claims case, the client must first determine which county small claims courthouse he/she will need to file the claim. If the client files in the wrong court, the court may dismiss the case and the client will have to re-file in the correct court.

In most cases, the small claims case can be filed in the local small claims courthouse **where the defendant lives, where the contract was made, or where the injury occurred**. Cal Civ. Proc. § 395. The client may also be able to file in another local courthouse based upon the type of claim the client is making. Form SC-100, paragraph 5 can help the client determine where he/she can file the case.

Does the client need help naming the defendant?

To fill out and file their claim, the client must have the **exact name of the person or company he/she is suing**. Using an incorrect name may prevent the client from collecting any money if he/she wins. Listed below are instructions on how to name certain defendants.

- ***Individuals***: Write the first name, middle initial (if known), and last name. Example: "John A. Smith." If an individual has more than one name, list all of them (separated by the words "also known as" or "aka").
- ***A business owned by 1 person***: Write the names of both the owner and the business. Example: "John A. Smith, doing business as Smith Carpeting."
- ***A business owned by more than 1 person***: Write the names of both the business and the owner on each defendant line.
    - Example: If there are two owners for Suburban Dry Cleaning, the plaintiff would list each respective owner in a different defendant name slot. Defendant Name slot #1: John A. Smith, Doing Business As Suburban Dry Cleaning. Defendant Name slot #2: Mary B. Smith, Doing Business As Suburban Dry Cleaning.
- ***A business owned by a corporation***: Write the name of the corporation and the business. Example: Lotus Corporation, Lotus Corporation Doing Business As The Flower Company, and The Flower Company.
- ***A corporation or limited liability partnership***: Write the exact name of the corporation or limited liability company, as it is known, on the claim form.
    - Include either an Inc. (for corporations), LLC (for limited liability companies), LLP (limited liability partnerships), or LP (limited partnerships) at the end of the name of the business entity. Example: "Fourth Dimension Graphics, Inc."
- ***Suing because of a car accident***: Write the name of both the registered owner, or owners, and the driver. Example: If the owner and the driver are the same person, "Joe Smith, owner and driver." If the owner and driver are not the same, "Lucy Smith, owner, and Betty Smith, driver."

Does the client need help filling out the court forms?

If the client is ready to bring a small claims case he/she must complete the following forms:

- Plaintiff's Claim and ORDER to Go to Small Claims Court (Form SC-100).
- If there are more than 2 plaintiffs or 2 defendants, also fill out Other Plaintiffs or Defendants (Attachment to Plaintiff's Claim and ORDER to Go to Small Claims Court) (Form SC-100A).
- If the client needs more space to describe the claim and what happened, or he/she needs witness statements, he/she can use a Declaration (Form MC-030).
- If the client is suing as a business, he/she may also have to fill out Fictitious Business Name (Small Claims) (Form SC-103) declaration.

Ask the local court clerk if there are local forms the client has to fill out. Some courts ask for a local form called "Plaintiff's Statement to the Clerk." To get this form, the client can:

- Go to the clerk's office of the court where he/she will file the claim OR
- Mail the court a letter asking for the form and enclose a self-addressed, stamped envelope.

Is the client ready to file the forms with the court?

Once they client has completed the previously discussed court forms, he/she must file the forms with the court clerk. The process of filing forms with the court clerk is outlined below.

Gather the filing fees. The filing fees are based on the amount of the client's claim and the number of claims that the client has filed in the past. If the client has filed 12 or fewer claims in the past 12 months, the filing fees are as follows:

Claim Amount	Filing Fee
$0 - $1,5000	$30
$1,500.01 - $5,000	$50
$5,000.01 - $10,000	$75

Take the all completed forms, along with the filing fee, to the small claims clerk.

- File the forms with the clerk and get a date for the court hearing.
- When the forms are taken to the court, the clerk will look at the forms and may ask the client a few questions.
- After looking at the forms, the clerk will usually stamp the forms "Filed" and fill in the date, time, and location of the court hearing. The clerk will keep the originals of the forms and give the client a copy for the client to keep and other copies for each defendant he/she is suing.

Does the client need information about serving the defendant?

It is important that the client serve the right person. The table below can help the client identify the right person to serve.

Who is being sued	Who to serve
A partnership	If only the business is being sued, serve 1 of the partners If a business and the partners are being sued, serve each partner If a limited partnership is being sued, serve the general partner or general manager If the business has an agent for service, serve the agent
A corporation	Serve an officer of the corporation or their agent for service
A landlord	Serve the owner of the property the client is renting

Be sure to remind the client to have the server fill out a *Proof of Service (Small Claims)* (Form SC-104) for each person, business, or public entity served. If any of the defendants was served by substituted

service, the server must also fill out a *Proof of Mailing (Substituted Service)* (Form SC-104A) for the second step of mailing a copy of the Plaintiff's Claim.

The deadline to serve the defendant with your forms is as follows: for **Personal Service, 15 days before the court date** or 20 days if the person, business, or public entity being served is outside the county; for **Substituted Service, 25 days before your court date** or 30 days if the person, business, or public entity being served is outside the county.

CLIENT INSTRUCTIONS

Additional information on service of process that can be given to the client is included in the **Service of Process client instructions**.

Is the client prepared for his/her hearing?

It is important that client is prepared for trial. The steps listed below can help the client prepare for trial:

- **Prepare their story**
  - The client will have to explain to the judge why he/she filing a claim and what he/she wants the judge to do.
  - The client should organize their main points and brainstorm responses to potential questions by the defendant or the judge.
- **Gather Evidence**
  - Evidence can include:
    - Contracts
    - Estimates
    - Bills
    - Photographs
    - Diagrams that show how an accident happened
    - Police reports
  - The client should take all evidence with him/her to the trial.
  - If the client needs papers that someone else has and will not give to him/her, instruct the client to obtain issuance of a subpoena. More detail regarding subpoenas is included in the subpoena section below.
- **Gather Witnesses**
  - The client should take witnesses that saw what happened or who are experts on that subject.
  - If the client needs a witness at their hearing who will not voluntarily go, instruct them to obtain issuance of a subpoena. More detail regarding subpoenas is included in the subpoena section below.

CLIENT INSTRUCTIONS

Additional information on the small claims hearing, including a **hearing reference template** to help the client prepare for and present their case is included in the **Small Claims Hearing client instructions**.

Does the client need to request subpoenas?

A subpoena is a court order that requires a witness to come to court. It can also require a witness to bring certain papers to court for trial. The process of have a subpoena issued usually involves completing the necessary court forms, having the court clerk issue the subpoena, and then serving the subpoena on the necessary witness.

V. Defendants

If the client has received a Plaintiff's Claim and Order to Go to Small Claims Court (Form SC-100), then he/she has been named as a defendant in a small claim court action. The client may proceed in a number of ways, which are outlined below.

Is the client able to pay what the plaintiff is asking?

The client may in fact agree that he/she owes the plaintiff money. In this case, the client can ask the plaintiff to dismiss the case if he/she pays. If the client cannot pay all at once, he/she can ask the judge to make multiple payments.

Can the client settle before trial?

If the client believes he/she may be able resolve the dispute without going to trial, encourage him/her to attempt to settle the case with the plaintiff. More information on attempting to reach a settlement can be found in the Mediation and Settlement section of this chapter.

Can the client challenge venue?

The client must have been sued in the proper court, otherwise the judge may dismiss the plaintiff's claim.

In most cases, the small claims case can be filed in the local small claims courthouse **where the defendant lives, where the contract was made, or where the injury occurred**. Cal Civ. Proc. § 395. The plaintiff may also be able to file in another local courthouse based upon the type of claim the plaintiff is making. Form SC-100, paragraph 5 can help the client determine whether the plaintiff filed in the proper courthouse.

If the client decides to challenge venue, they can do so in two ways:

1. The client can **write a letter** to the court address shown on the claim they received and explain why the venue is improper. The client must also send a copy of the letter to the other side and file a proof of mailing.
2. Go to court on the hearing date and ask for the case to be dismissed due to improper venue.

What happens if the client does not respond to the complaint?

If the client does not go to trial, the judge will probably enter a default judgment against him/her. The plaintiff will probably get what he/she is asking for plus any filing fees or other court costs related to the small claims case. If this happens, the plaintiff can legally have a law enforcement officer seize the client's money, wages, and property to pay the judgment.

Does the client want to counter-sue?

If the client thinks that the person suing him/her owes the client money or has hurt the client, he/she can file and serve a defendant's claim (SC-120).

A Defendant's Claim must be filed and served at least **5 days** before the hearing date, or at least 1 day before the hearing date if the defendant was served with the Plaintiff's Claim 10 days or less before the hearing date.

The same eligibility criteria that applies to the Plaintiff's Claim also applies to the Defendant's Claim. The process for filing a defendant's claim is outlined below:

What forms are required for a Defendant's Claim?

- Defendant's Claim and ORDER to Go to Small Claims Court (Form SC-120).
- If there are more than 2 plaintiffs or 2 defendants, also fill out Other Plaintiffs or Defendants (Attachment to Defendant's Claim and ORDER to Go to Small Claims Court) (Form SC-120A).
- Use a Declaration (Form MC-030) if more space is needed.
- Be sure to have the client ask the local court clerk if there are local forms they must fill out.

How can the client file a Defendant's Claim?

Gather the filing fees. The filing fees are based on the amount of the client's claim and the number of claims that the client has filed in the past. If the client has filed 12 or fewer claims in the past 12 months, the filing fees are as follows:

Claim Amount	Filing Fee
$0 - $1,5000	$30
$1,500.01 - $5,000	$50
$5,000.01 - $10,000	$75

Take all completed forms, along with the filing fee, to the small claims clerk. File the forms with the clerk and get a court hearing date.

- When the forms are taken to the court, the clerk will look at the forms and may ask the client a few questions.
- After looking at the forms, the clerk will usually stamp the forms "Filed" and fill in the date, time, and location of the court hearing (it should be the same date as on the Plaintiff's Claim). The clerk will keep the originals of the forms and give the client a copy to keep and other copies for each plaintiff he/she is suing.

Who needs to be served with the Defendant's Claim?

It is important that the client serve the right person. The table below can help the client identify the right person to serve.

Who is being sued	Who to serve
A partnership	If only the business is being sued, serve 1 of the partners If a business and the partners are being sued, serve each partner If a limited partnership is being sued, serve the general partner or general manager If the business has an agent for service, serve the agent
A corporation	Serve an officer of the corporation or their agent for service

A landlord	Serve the owner of the property the client is renting

Be sure to remind the client to have the server fill out a Proof of Service (Small Claims) (Form SC-104) for each person, business, or public entity served. If any of the plaintiffs were served by substituted service, the server MUST also fill out a Proof of Mailing (Substituted Service) (Form SC-104A) for the second step of mailing a copy of the Defendant's Claim.

CLIENT INSTRUCTIONS

Additional information on service of process that can be given to the client is included in the **Small Claims Hearing client instructions**.

Does the client need to postpone the hearing?

If the client cannot attend the hearing and needs to have it postponed, he/she can prepare and file a Request to Postpone Trial (SC-150). The client must file the request with the small claims court clerk no later than 10 days before the trial. The client must also send a copy of the request to the other party.

The court usually will postpone a scheduled hearing in the following situations:

- The plaintiff hasn't been able to serve the defendant;
- The defendant wasn't served a sufficient number of days before the hearing date;
- The defendant filed a defendant's claim and the plaintiff wasn't served with the defendant's claim at least five days before the hearing (unless the defendant was served with the plaintiff 's claim less than 10 days before the hearing, in which case the defendant may serve the plaintiff as late as the day before the hearing);
- The court determines that the parties desire to engage in mediation or other form of alternative dispute resolution.

If the client is unsure whether his/her particular reason may be a good enough reason for the court to postpone the hearing date, check with a small claims adviser.

Is the client prepared for his/her hearing?

It is important that the client is prepared for trial. The steps listed below can help the client prepare for trial:

- **Prepare their story**
  - The client will have to explain to the judge why he/she is filing a claim and what he/she wants the judge to do.
  - The client should organize their main points and brainstorm responses to potential questions by the defendant or the judge.
- **Gather Evidence**
  - Evidence can include:

        - Contracts
        - Estimates
        - Bills
        - Photographs
        - Diagrams that show how an accident happened
        - Police reports
    - The client should take all evidence with him/her to the trial.
    - If the client needs papers that someone else has and will not deliver to them, instruct them to obtain issuance of a subpoena. More detail regarding subpoenas is included in the subpoena section below.
- **Gather Witnesses**
    - The client should take witnesses that saw what happened or who are experts on that subject.
    - If the client needs a witness at the hearing who will not voluntarily go, instruct them to obtain issuance of a subpoena. More detail regarding subpoenas is included in the subpoena section below.

Does the client need to request subpoenas?

A subpoena is a court order that requires a witness to come to court. It can also require a witness to bring certain papers to court for trial. The process of having a subpoena issued usually involves completing the necessary court forms, having the court clerk issue the subpoena, and then serving the subpoena on the necessary witness.

VI. Appealing or Vacating a Judgment

Can the client appeal a judgment?

If the client is the **plaintiff**, he/she **has no right to appeal** a judgment made about the claim he/she brought. However, the plaintiff can appeal a judgment on a defendant's counter-claim.

If the client is the **defendant**, he/she does have a right to appeal a judgment. However, if the defendant did not appear at the hearing and received a default judgment, he/she does not have a right to appeal the judgment and must make a motion to vacate the judgment. (See below).

To appeal a judgment, the client will need to file a Notice of Appeal (Form SC-140) with the clerk of the Small Claims Court no later than **30 days** after the clerk mailed a Notice of Entry of Judgment to the parties. There is a $75 filing fee.

There will be a new hearing set on appeal. At the hearing, a new judicial officer will hear the evidence for the first time under the same informal evidentiary and procedural rules as the first hearing. The one exception is that the parties may be represented by an attorney on appeal. The judgment of a hearing on appeal is final and not appealable.

Can the client vacate (set aside) a judgment?

A client may make a motion to vacate a judgment if the legal basis for the decision was wrong; there was a clerical error in the judgment that requires correction; or the client had a default judgment entered against him/her because he/she failed to appear at the hearing.

If the **legal basis** for the decision was wrong or there was a **clerical error** in the judgment, the client must file a Notice of Motion to Vacate Judgment and Declaration (Small Claims) Form (Form SC-135) with the clerk of the Small Claims Court within **30 days** after the court has mailed the Notice of Entry of Judgment to the parties.

If the client failed to appear at the hearing, the client can file a Notice of Motion to Vacate Judgment and Declaration (Small Claims) Form (Form SC-135) for the following reasons:

- **Good cause**. The client has **30 days** from the day the court clerk mailed the Notice of Entry of Judgment to the parties to file the motion.

Please note that **plaintiffs may not appeal** a decision denying a motion to vacate a judgment, while **defendants may appeal** a denial by filing a Notice to Appeal (Form SC-140) with the clerk of the Small Claims Court within **10 days** after the clerk has mailed the court's decision to deny the motion.

- **Improper service**. If the client (defendant) had no actual notice of the plaintiff's claim and order to go to small claims court, the client has **180 days** after he/she discovered or should have discovered that a judgment was entered against him/her to file the motion to vacate along with a supporting declaration.

- **No actual notice received**. If the client (defendant) had no actual notice of the plaintiff's claim and order to go to small claims court, the client may be able to file a notice of motion to set aside a default judgment within a **"reasonable time"** that does not exceed the earlier of (1) 2 years after entry of the default judgment or (2) 180 days after written notice that the default judgment has been entered was served on the client. Cal. Civ. Proc. § 473.5(a).

If the client wishes to vacate a default judgment:

- Fill out a Notice of Motion to Vacate Judgment and Declaration (Small Claims) Form (SC-135).
  - File it with the small claims court clerk.
  - Pay the filing fee of $20 or, if the client is eligible, submit a Fee Waiver. For more information about fee waivers, see www.courts.ca.gov/selfhelp-feewaiver.htm.
- The clerk will give the client a date for the hearing. At the hearing, the judge will decide whether to cancel the judgment.

VII. Paying or Collecting A Judgment

Does the client have a judgment he/she needs to collect?

The client cannot collect the judgment until:

- The time to appeal has expired (**30 days after the judgment**) or
- If there was an appeal, after the appeal decision made in the client's favor is sent back to small claims court

The court will not collect the money for the client, but will issue the order and other documents the client may need to collect the judgment from the other party. Please remind the client that not all judgments are collectible as the debtor may not have any income or property of value.

First, ask the judgment debtor to pay voluntarily. The best outcome is for the debtor to pay the client voluntarily to avoid the client's having to spend time and money attempting to collect the judgment. If the judgment debtor does not pay promptly, it may become necessary for the client to write a letter to the debtor reminding them of the following:

- The amount the debtor owes will increase daily, since the judgment accumulates interest at the rate of 10% per year.
- The client is entitled to recover reimbursement from the debtor any reasonable and necessary costs of collection.
- Credit reporting agencies will know the debtor has not paid the judgment because the debtor's name will appear on the court's "Judgment Roll" which is a public record. The credit reporting bureaus go to each courthouse and get that information for their records.
- If the debtor does not pay, the client can ask for:
    - A wage garnishment against the debtor, and maybe the debtor's spouse, or the debtor's domestic partner
    - A levy on the debtor's bank account or safe deposit box
    - Liens on real property (like a house or land) or personal property
    - Suspension of the debtor's professional license, like a real estate, contractor's, or driver's license in certain situations.

Be flexible about payment. The client may consider accepting weekly or monthly payments or even negotiating a plan where the judgment debtor pays less than what the court ordered. In addition, the client may consider letting the debtor "pay" the judgment amount with property or work.

If the debtor does not pay voluntarily, the client can collect from the debtor's income and/or property. In order to collect from the debtor's income and/or property, the client must first determine what income and/or property the debtor possesses. To make this determination, the client must require the debtor to appear before the court and undergo a debtor's examination. In a **debtor's examination** the client can ask the debtor questions about his or her income and property. They can also ask about things like where he or she works, how much he or she earns, bank accounts, stocks, other income sources, property and belongings, and anything else that can be used (or sold) to pay the judgment. The process for requesting a debtor's examination is outline below.

- The client must fill out and file an Application and Order to Produce Statement of Assets and to Appear for Examination (Form SC-134) and attach a blank Judgment Debtor's Statement of Assets (Form SC-133).

- The client may also fill out a *Small Claims Subpoena for Personal Appearance and Production of Documents at Trial or Hearing and Declaration* (Form SC-107) for any of the debtor's documents that he/she needs to see.
- The client must then take these forms to their court clerk to file and get a hearing date. Finally, the client must serve a copy of Form SC-134, the blank Form SC-133, and Form SC-107 on the debtor.

If the judgment debtor fails to appear at the hearing as required by the Form SC-134 and Form SC-107 court orders, the client may apply for the issuance of an arrest warrant to have the judgment debtor brought before the court to answer for his/her failure to appear, to be held in contempt, and/or be ordered to pay the client's reasonable attorney's fees incurred in pursuing the Form SC-134 procedure. Cal. Civ. Proc. Code § 708.170.

Does the client need to renew their judgment?

Money judgments automatically expire after 10 years. To prevent this from happening, the client must file a request for renewal of the judgment with the court before the 10 years run out. If the judgment is not renewed, it will not be enforceable any longer and the client will not be able to get paid. Once a judgment has been renewed, it cannot be renewed again until 5 years later. But the client must make sure it is renewed at least every 10 years or it will expire.

When the judgment is renewed, the interest that has accrued will be added to the principal amount owing. From that point on, the client is entitled to interest on the principal and the accrued interest.

EXAMPLE OF ACCRUED INTEREST AT JUDGMENT RENEWAL

If the client has a **judgment for $6,000** and after nearly 10 years the debtor has not paid anything, the judgment accrues daily interest of $1.64 ($6,000 x 10% = $600; $600÷ 365 days gives the daily interest). The client seeks to renew the judgment after about 9 years and 10 months, or exactly 3,605 days, the accrued interest is $5,912.20 (3,605 days x $1.64).

Once that is added to the original judgment, a **renewed judgment** of $11,912.20 can be entered. The interest will now accrue at a rate of $3.26/day ($11,912.20 x 10% = $1,191.22 ÷ 365 days).

The process to renew a judgment is outlined below:

- The client must use an *Application for and Renewal of Judgment* (Form EJ-190) and the *Notice of Renewal of Judgment* (Form EJ-195). *The Notice of Renewal of Judgment* must be personally served on the debtor or served by first-class mail.
- **Liens created at the time of the original judgment also must be renewed**. This is because when the judgment is renewed, the liens are no longer enforceable since the judgment the liens were based on is no longer enforceable.
- In order to extend a real property lien, the client must record a certified copy of the Application for and Renewal of Judgment (Form EJ-190) with the county recorder in the county where the property subject to the lien is located.

Has the client received payment for a judgment?

If the client has received payment for a judgment, he/she must complete the following two steps:

1. **File an acknowledgement of satisfaction**. The client must file an Acknowledgment of Satisfaction of Judgment (Form SC-290 or Form EJ-100) with the court after the debtor pays the judgment. Form SC-290 will tell the client which of the 2 forms to use.
    - If the debtor makes a written request and the client does not file the acknowledgment within 14 days, he/she can be held liable for all damages sustained, plus $50.
    - If there are no liens related to the judgment, the client can sign the Acknowledgment of Satisfaction of Judgment on the back of his/her copy of the small claims judgment. If a lien exists, he/she will have to use Form EJ-100 and have it notarized before filing it with the court and recording a certified copy with the county recorder's office.
1. **Remove liens placed on the debtor's property**.
    - To remove a real property lien, the client must use an Acknowledgment of Satisfaction of Judgment (Form EJ-100) and have it notarized before filing it with the court. Then record a certified copy with the county recorder's office.
    - To remove a personal property lien, follow the instructions on the Judgment Lien Change Form (JL-3) and send it to California Secretary of State at the address shown on the JL3 form.

Does the client have a judgment he/she needs to pay?

If the client lost a small claims case and is ordered to pay money to the winning side, he/she becomes a judgment debtor. The court will not collect the money for the judgment creditor (the person the client owes money to), but if the client does not pay voluntarily, the creditor can use different enforcement tools to get the client to pay the judgment.

Keep in mind that **if the client does not pay the judgment**:

- The amount he/she owes will **increase daily**, since the judgment accumulates interest at the rate of 10% per year.
- The judgment creditor can get an order requiring the judgment debtor to reimburse him/her for any reasonable and necessary **costs of collection**.
- The client's **credit may be damaged** because credit reporting agencies will know the client has not paid the judgment when his/her name appears on the court's "Judgment Roll." This can make it difficult for the client to get a loan, get a credit card, or even rent an apartment.

It is highly recommended that, if possible, the client voluntarily pay the judgment in full. To do so, the client must pay the judgment to the court, fill out and file a Request to Pay Judgment to Court (Form SC-145).

If the client **cannot pay the judgment in full**, the client can try talking to the creditor to see if he/she is willing to work out a **payment plan** with the client. If the client works something out, he/she should make sure all the details are in writing. The agreement should include due dates, grace periods (if any), if and how interest will accrue, where the client should send the payments, what form of payment will be

accepted, and who the client should make the payments to. Make sure the client keeps detailed records and proof of his/her payments.

If the other side does not agree to a payment plan, the client can try asking the court for one. To ask the court for a payment plan, the client must do the following:

- Fill out and file a *Request to Make Payments* (Form SC-220). He/she must also fill out a *Financial Statement* (Form EJ-165).
- The court clerk will mail a copy of the request and financial statement to the judgment creditor, along with a blank Response to Request to Make Payments (Form SC-221).
    - The creditor has 10 days to tell the court that:
    - He or she will accept the proposed payment schedule;
    - He or she will accept payments in a different amount; OR
    - He or she does NOT want to accept installment payments.
- If the **creditor does not respond within 10 days**, the court will assume that he or she accepted the proposed payment schedule and will grant the request to pay in installments.
- If the creditor **does not accept the proposed payment schedule**, the court will probably hold a hearing to discuss the request and make a decision.

Has the client paid the judgment?

After the client pays the judgment in full, the judgment creditor must:

- File an Acknowledgment of Satisfaction of Judgment (Form SC-290 or Form EJ-100); and
- Remove any liens he or she has placed on the client's real and personal property.

If the creditor does not file the Acknowledgment of Satisfaction of Judgment (Form SC-290 or Form EJ-100) when the client pays the judgment, the client can send a letter to the judgment creditor by certified mail with return receipt requested. In the letter, the client should tell him or her that the law requires that he or she file an Acknowledgment of Satisfaction of Judgment *within 15 days of receiving payment* and that if he or she does not do this, the client can sue the judgment creditor for $50 plus damages.

The client can also, if he/she has **proof that he/she paid** the judgment, fill out and file a **Declaration of Judgment Debtor Regarding Satisfaction of Judgment**. This is usually a local form the client can get from their clerk's office or from the court's website.

If the client does not have proof that he/she paid the judgment and the creditor has *not* filed an *Acknowledgement of Satisfaction of Judgment* (Form SC-290 or Form EJ-100), the client must:

- Fill out a Request for Court Order and Answer (Form SC-105)
- On the form, indicate the objective of having the court "**Enter Satisfaction of Judgment**."
- File the form with the clerk.

The clerk may schedule a court date and let the client and all other parties know. If the court is convinced that the client has paid, the court will enter the satisfaction of judgment.

Once the client has a satisfaction of judgment, he/she should update his/her credit report so that it shows that he/she has paid the debt. To update the client's credit report, he/she must:

- Get 3 certified copies of the Acknowledgment of Satisfaction of Judgment from the clerk's office AND
- Mail a certified copy to each of the 3 major credit reporting agencies: Equifax, Experian, and TransUnion.

10. SMALL BUSINESS

Many of our clients have difficulty finding employment due to past mistakes or are trying to rebuild their lives after a difficult divorce or economic downturn. In some cases, starting a business may be a viable option for them to earn money and use their skills.

This guide provides a general overview for clients who have come to CLA-LA seeking guidance for business related issues. By helping clients to form businesses, volunteer attorneys are providing critical guidance for those trying to support themselves and their families, and to become productive members of society.

CONTENTS

I. Starting a Business

Because CLA-LA has limited resources, **we are not able to provide on-going assistance**; however, we are able to educate clients about the **Limited Liability Company (LLC)** business structure and its process of formation. Our clients should also be advised to seek further legal advice and representation as necessary, as well as mentors in the particular industry in which they hope to do business.

Please note that as a general rule the client's small business should be **profitable** before the client considers changing their sole proprietorship or partnership into an LLC. While considerably less expensive than other types of business organizations, LLCs still require many expenditures, including an $800 annual California LLC tax.

During the interview, it may become apparent that forming an LLC is not the appropriate decision for the client given his financial and professional circumstances; sometimes the best advice we can give is

that the business **remain a sole proprietorship** until the client has the resources to obtain legal counsel on an ongoing basis. We generally recommend that new business owners consider starting an LLC, but they must be informed when making the decision, as it can be expensive to create and maintain.

A. Unintentional and Informal Entities

There are some business entities that **do not require any formality** to form. Please educate and caution the client about these entities, and explain some of the liabilities involved.

The California Secretary of State and the Governor's Office of Business and Economic Development websites have many resources for business owners, including information on each entity type. For more information visit http://www.sos.ca.gov/business-programs/ or http://business.ca.gov/StartaBusiness.aspx

Has the client created a sole proprietorship?

A sole proprietorship is a business entity in which the client owns all assets, receives all profits, and does all the work themselves. The client does not need to file any formation documents with the California Secretary of State to establish a sole proprietorship, but, because a sole proprietorship does not require any formality to form, it will not be treated as an independent entity for liability or tax purposes.

For additional information on sole proprietorships, please visit:

- http://www.sos.ca.gov/business-programs/business-entities/starting-business/types/
- http://www.irs.gov/businesses/small-businesses-self-employed/sole-proprietorships/

A sole proprietor is **personally liable** for all of the business' obligations and taxes. For this reason, we generally only recommend that the client run their business as a sole proprietorship if it is very small or until it is profitable enough to justify an LLC.

If a sole proprietorship is desired, please inform the client about obtaining **adequate insurance coverage** to cover the risks specific to the business activity engaged in (i.e., general liability insurance and property damage insurance). The client should speak to an insurance agent for more information. Please see www.taxes.ca.gov/soleprobus.shtml.

Does the client want to operate a sole proprietorship under a business name?

If the client wants to operate a sole proprietorship under a name different from their own, please inform them of which forms they must complete and file with the appropriate county clerk. Cal. Bus. & Prof. C. § 17913. If the client's principal place of business is in Los Angeles County, please visit http://www.lavote.net/home/county-clerk/fictitious-business-names/general-info.

Please make sure clients are aware that operating a sole proprietorship under a "business name" does not mean that they are protected from personal liability; if they wish to create a separate business entity, they should consider forming an LLC. See [MT] Before Forming an LLC for more information.

To establish a sole proprietorship under a different name, the client must file:

- A Fictitious Business Name Statement; and
- A notarized Affidavit of Identity Form (AB 1325). Cal. Bus. & Prof. C. § 17916.

The Fictitious Business Name Statement be filed with the county where the principal place of business is located. Cal. Bus. & Prof. C. § 17915.

Without proof of registration, many banks will not open an account under a fictitious business name. In addition, other companies will not be able to find the business by searching a d.b.a. name database, so the county may allow another company to share an exact or similar name that confuses customers. Please refer clients to the specific county's website for more information.

Has the client created a general partnership?

A general partnership is created when two or more individuals carry on a business as co-owners for profit. Like sole proprietorships, no formality is needed to create a partnership; all that is required is the intention to run a business as co-owners for profit. See Cal. Corp. C. § 16202.

Partners are all jointly and severally liable for all the obligations of the partnership. Cal. Corp. C. § 16306(a). Partnerships can hold property in the partnership's name and can sue or be sued in the name of the partnership even without the other partner's explicit agreement. See Cal. Corp. C. §§ 16203; 16301; 16307.

Generally, CLA-LA would recommend that a client engaged in a partnership convert the partnership into a **limited liability company**.

Has the client entered into a joint venture?

A joint venture is an association of persons with the intent to engage in a single business for joint profit. The legal impact of joint venture status is almost identical to that of a partnership. See Bank of Cal. v. Connolly, 111 Cal. Rptr. 468, 477 (Cal. Ct. App. 1974).

B. Before Forming an LLC

Does the client have a business plan?

Before the client starts the process of registering their company and complying with federal, state, and local requirements, please make sure that the client fully evaluated the product or service offered, the relevant markets, and has a thorough business plan.

The client can use the U.S. Small Business Administration website to get started on creating his business plan. Visit https://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business
There are also low-cost business-development workshops that are hosted throughout Los Angeles County by the California Small Business Development Center. Some resources to start with include:

- SCORE LA - http://www.scorela.org
- Los Angeles Small Business Development Center - http://business.lacity.org/resources/service-centers
- City of LA Business|Source Centers - http://www.losangelesworks.org/businessServices/BusinessSourceCenters.cfm

Is the client's business able to make a profit?

Please note that as a general rule the client's small business should be profitable before they consider changing their sole proprietorship or partnership into an LLC. While considerably less expensive than other types of business organizations, LLCs still require many expenditures, including an **$800 annual California LLC tax**. In addition, the client should expect to spend a **several hundred dollars on starting fees, licensing fees, and tax requirements** for a new company.

Is the client aware of promoter liability and novation?

When starting a business, individuals often **sign contracts for the business** such as a rental agreement, equipment purchases, etc., before the business is legally formed. It is important that the client knows that by doing so, they become a "promoter" for the business entity and is liable for the contractual obligations, even if the benefit runs to the later formed business entity. See Cal. Corp. C. § 25102(h)(3); MacDonald v. Arrowhead Hot Springs Co., 300 P. 105, 107 (Cal. Dist. Ct. App. 1931). The business entity cannot be held liable for the obligation because it did not exist at the time the obligation was created! See Scadden Flat Gold-Min Co. v. Scadden, 53 P. 440, 442 (Cal. 1898).

If the business entity receives the benefits of the contract, then the entity becomes jointly and severally liable along with the promoter. See White v. Kaiser-Frazer Corp., 224 P.2d 833, 837 (Cal. Dist. Ct. App. 1950). Promoter liability is common in corporate formation, but the theory can be applied to other forms of business entities such as a limited liability company.

A novation is an agreement between a promoter, a formed business entity, and a third party to transfer an obligation from the promoter to the formed business entity. See Cal. Civ. C. §§ 1530-1532. Without a

novation, the promoter remains liable to the third party, but they may seek indemnification against the formed business entity. A promoter who expressly limits their obligation in a pre-organization agreement creates a revocable offer to the proposed business entity, but not a contract. See Shell Oil Co. v. Hanchett, 63 P.2d 338, 339 (Cal. Dist. Ct. App. 1937).

What are the benefits of an LLC, and is it right for the client?

The LLC business structure provides clients with limited personal liability for business debts, while also being considerably less expensive than other types of business entities to develop and operate. It gives owners, known as "members," both the benefits of corporate-style limited liability, while also allowing partnership-style pass-through taxation. An LLC can have one or more members. Management of the LLC is presumed to be by all of the members unless otherwise stated in the Articles of Organization. Cal. Corp. C. § 17704.07. For more information about the Articles of Organization, see Section III. F. (p. 8).

If the client has a certified professional license (e.g., contractors, hair dressers, lawyers) and wants to start a business, they often CANNOT start an LLC. Instead, in California, professionals must form a professional limited liability partnership (LLP). Cal. Corp. C. §§ 13401(a), 13401.3.

Limited Personal Liability

Generally, members of an LLC are not personally liable for the LLC's debts, protecting members from legal and financial liability in case the business fails or loses a lawsuit. Cal. Corp. C. § 17703.04. Creditors may take all of the LLC's assets, but they generally cannot take the personal assets of the LLC members.

An LLC member may still be subject to personal liability in the following situations:

1. 1. An LLC member who gives a **personal guarantee** on a loan, which is typically required by banks as a source of security, will incur personal liability.
2. 2. The IRS and the California Franchise Tax Board may go after personal assets of LLC members for **overdue federal and state business tax debts**, particularly overdue payroll taxes.
3. 3. **Negligent or intentional acts** by an LLC member may make them personally liable. Cal. Corp. C. § 17703.04(c).
4. 4. LLC members have a legal duty to act in the best interest of their LLC and its other members. When they fail to do so, and thereby **breach their fiduciary duty**, it may subject them to personal liability. See Cal. Corp. C. § 17704.09.
5. 5. "Piercing the Corporate Veil." When LLC members **fail to respect the separate legal existence of the LLC**, and instead treat the LLC as an extension of their personal affairs, a court may rule that the members are not protected by limited personal liability. Cal. Corp. C. § 17703.04(b).

To reduce the risk of personal liability, an LLC and its members should follow company formalities including:

- Getting a Federal Employer Identification Number (FEIN);
- Opening a separate LLC checking account;
- Keeping separate accounting books for the LLC;
- Keeping accurate and current records;
- Taking notes of all formal meetings between LLC members;
- Funding the LLC sufficiently to meet foreseeable expenses;

- Filing an "Articles of Organization" with the Secretary of State; and
- Procuring all necessary licenses and permits.

Pass Through Taxation

An LLC is not an independent entity for tax purposes. Instead, members use their personal tax returns to pay taxes on their allocated share of the profits (or deduct their share of business losses). This pass-through taxation helps avoid the "double-taxation" associated with a corporate business structure. Please be aware, however, that an LLC can elect to be taxed as a corporation. See www.ftb.ca.gov/forms/misc/3556.pdf for more information.

Unlike an LLC, a corporation is viewed as a separate entity for tax purposes. The "double-taxation" that generally results from the corporation business structure can be burdensome for smaller businesses. Note that not all corporations are doubly taxed. A corporation can elect to have S-corporation status, thus having the benefit of pass-through taxation.

For California income and franchise tax purposes, LLCs are classified in one of three ways. These classifications can provide general guidance to the client, but clients must be advised to refer to a corporate tax specialist. The classifications of LLCs in California are:

- **Single-member LLC (SMLLC)** classified as Disregarded Entity. Generally, SMLLCs do not report income separately from their owners. SMLLCs, however, are treated separately for the purposes of the annual tax, LLC fee, tax return requirements, and credit limitations.
- **LLCs classified as Partnerships** (more than 1 member). These LLCs determine and report their California income, deductions, and credits separately under the personal income tax law. These items pass through to their owners for the purposes of taxation.
- **LLCs that *elect* to be classified as an Association** (taxable as a corporation) for federal purposes. Generally, these LLCs determine their California income under the corporation tax law.

Please see www.ftb.ca.gov/forms/misc/3556.pdf.

REFER OUT

If the client wants to form a **different type of business structure** (e.g. **corporation, S corporation, etc.**), please refer the client to the California Secretary of State website for more general information, www.sos.ca.gov/business/be/, or speak to the Executive Director to refer the client to a private attorney.

C. LLC Formation

Does the client need help creating a business name?

Generally, trademark law prevents a business from using a name or logo that is likely to be confused with one used by a competing business. This trademark rule applies to the name of the business, the names and packaging of products, and the names of services that a company provides.

When creating a business name, the client should first **make sure that the desired name is not already being used**. Do a preliminary search (Google, Twitter, Facebook, etc.) to see if the name that the client plans to use is already taken by another entity. The client should also search:

- The California Secretary of State website;
- The Los Angeles County fictitious business names;
- U.S. Patent and Trademark Office trademarks.

Note that businesses may have **specific naming requirements**. See the Secretary of State's website for more information. http://www.sos.ca.gov/administration/regulations/current-regulations/business/business-entity-names/.

Print and complete a *Name Availability Inquiry Letter*. The client should mail the letter with a self-addressed envelope to:

Secretary of State
Name Availability Unit
1500 11th Street, 3rd Floor
Sacramento, CA 95814

If the desired business name is available, the client should **reserve it for 60 days** by completing a *Name Reservation Request Form*. Mail the form, a check for $10 made payable to the Secretary of State, and a self-addressed envelope to address above.

Both Name Availability Inquiry Letter and Name Reservation Request Form are available at http://www.sos.ca.gov/business-programs/business-entities/name-availability.

REGISTERING A TRADEMARK

Once the name has been reserved, the client should consider **registering the name as a trademark**. Information on registering a name as a trademark with the United States Patent and Trademark office is available at http://www.uspto.gov/trademarks-getting-started/trademark-basics and http://www.uspto.gov/sites/default/files/BasicFacts.pdf CLA-LA advises clients to hire an attorney for registering a trademark.

Has the client filed Articles of Organization?

In order for the client to properly create an LLC and obtain its benefits, the client must file Articles of Organization with the California Secretary of State's Office. See Cal. Corp. C. § 17702.01; www.sos.ca.gov/business/llc/forms/llc-1.pdf.

The Articles of Organization must include:

- a statement that the entity is an LLC,
- the entity's name, which must indicate that it is an LLC, typically by including "LLC" in the name,
- the California street address (not a P.O. Box) of the LLC's registered office and name of its registered agent for service of process,
- the names of all the LLC's members, and

- whether the LLC will be managed by all members or one or more managers.

Please see "Articles of Organization" in Appendix B for an example that the client can use as a guide to draft and file Articles of Organization. More filing information can be found at http://www.sos.ca.gov/business-programs/business-entities/filing-tips/filing-tips-llc/.

A domestic LLC has until the 15th day of the 4th month after its Articles of Organization is filed with the California Secretary of State's Office to pay the first-year annual tax. For the LLC's first year, this is measured from the date the business files the Articles of Organization. For example, if the client filed the Articles of Organization on June 19th, the annual tax will be due October 15th. **The annual tax is $800**. See www.ftb.ca.gov/forms/misc/3556.pdf.

Does the client have a Federal Employer Identification Number (FEIN)?

A FEIN is the Taxpayer Identification Number for an LLC issued by the Internal Revenue Service (IRS) and functions like a social security number for the LLC. The client will need to use their LLC's FEIN for important business documents, including local tax registration forms, federal tax returns, and any applications for business licenses.

If the client needs to apply for a FEIN, the client should go to http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Apply-for-an-Employer-Identification-Number-(EIN)-Online.

The client can also apply by mail or by fax. The client should print out and complete an Application for Employer Identification Number Form (Form SS-4), and send the completed form to the appropriate address or number. See www.irs.gov/pub/irs-pdf/iss4.pdf for instructions, and download the form at https://www.irs.gov/pub/irs-pdf/fss4.pdf.

Does the client require an Employer Payroll Tax Account Number (EPTAN)?

In California, an LLC becomes subject to state payroll taxes and needs an EPTAN when it pays wages over $100 in a calendar quarter to one or more employees. See Cal. Unemp. Ins. C. § 675.

The business entity must obtain its EPTAN by registering with the California Employment Development Department (EDD) within 15 days of becoming subject to state payroll taxes. Cal. Unemp. Ins. C. § 1086. Members of an LLC sharing in the profits of the LLC are not considered employees for state payroll tax purposes, but there may still be member tax issues.

To register the business with the California Employment Development Department, the client must either:

- Call the EDD toll free at (888) 745-3886;
- Visit the EDD website for how to apply online: http://www.edd.ca.gov/Payroll_Taxes/Save_Time_and_Register_Online.htm, or
- Visit the nearest Employment Tax Office. The nearest Employment Tax Office locations can be found by visiting www.edd.ca.gov/Office_Locator/.

Has the client obtained a local tax registration certificate (a business license)?

An LLC must obtain a **business license** with the city, or sometimes, the county. L.A. Mun. C. § 21.03; Cal. Corp. C. § 17702.01(g); Cal. Rev. & Tax. C. §17941(a).

To register and obtain a business license, LLC members must pay: (1) an annual fee, which varies from city to city or county to county, and (2) any taxes associated with the business.

This chapter does not provide an exhaustive list of taxes an LLC may have to pay. For additional information and a list of other taxes that an LLC may need to pay, please visit www.taxes.ca.gov/doingbus.shtml.

The client should be advised to do a web search for the specific city's Tax Collector's Office or he should contact the local County Tax Collector, sometimes called the County Clerk.

Does the client need to obtain a California seller's permit?

If the client plans to sell merchandise, the client must obtain a seller's permit from the California Board of Equalization (BOE). The seller's permit allows the business to collect sales tax from customers to cover any sales tax that is owed to the BOE. See Cal. Rev. & Tax. C. § 6066.

The client will need a permit for each location where goods are sold, but the client will not need to apply separately for each permit. The client should simply include the address of each location with the application, and the BOE will issue as many permits as needed.

The client can apply for a seller's permit online or in person. More information is available at www.boe.ca.gov/info/reg.htm or by calling (800) 400-7115.

Does the client need to obtain specialized vocation-related licenses or environmental permits?

Some business activities are prohibited until a license or permit is obtained. Also, some locations require special approval from the local planning department before business operations can begin. Direct the client to www.calgold.ca.gov, which provides license information for California businesses including the types of businesses that require a special permit or license.

Please note that regulations are not licenses! Regulations tend to have different objectives. Direct the client to the Client Instructions for a list of regulations that may affect the particular business.

Does the client need to register a fictitious company name with the county?

If the client wants his LLC to do business under a name that is **different from the name in the LLC's Articles of Organization**, then the client needs to register the fictitious business name, also called doing business as (d.b.a.) with the appropriate county. Cal. Bus. & Prof. C. §§ 17910; 17915. Example: Carol Caffeine LLC, d.b.a. "Carol's Costa Mesa Coffee House."

Without proof of registration, many banks will not open an account under a fictitious business name. In addition, other companies will not be able to find the business by searching a d.b.a. name database, so the county may allow another company to share an exact or similar name that confuses customers.

II. Business Operations

Clients who come to CLA-LA may have questions about the management of their businesses. The following may provide general answers to some of the more common concerns our clients have, specifically regarding the management of LLCs.

A. Governance and Risk Management

The following are some general Risk Management and Corporate Governance issues that clients may need to be aware of:

Company Liability. An LLC's assets may be taken to satisfy judgments after a lawsuit. There are many potential events that may result in liability for an LLC. See Cal. Corp. C. § 17703.04.

Owner's Responsibility for Claims against Employees. An LLC may be held vicariously liable for the acts of its employees. Meyer v. Holley, 537 U.S. 280 (2003).

Claims by Employees against Members. LLCs that are employers may be liable for a variety of actions against employees or even potential employees, such as wrongful termination of employment, defamation, sexual harassment, illegal discrimination, privacy, or personal injuries.

Insurance. An LLC may be required to procure insurance, including:

- Liability coverage if the business or its employees use a company or personal vehicle for business purposes.
- Workers' Compensation and Unemployment Insurance is required if the business has one or more employees. See Cal. Lab. C. § 3700; Cal. Unemp. Ins. C. § 675.
- Various types of insurance for approval of loans for certain lenders.

There are various forms of insurance that may also be beneficial, including: property insurance, personal injury liability insurance, product liability insurance, auto insurance, malpractice insurance, and theft

insurance. Some businesses will require business specific insurance depending on the service or product provided.

Management. An LLC is managed by all of its members unless the LLC selects a different type of management structure (e.g., management by a select few members in the LLC's Articles of Organization.) Members of an LLC owe a duty of loyalty and care to the other members. Cal. Corp. C. §§ 17704.07; 17704.09.

B. Corporate Taxes

If the client has a tax-related business issue, it is best for the client to consult a tax attorney about how the federal, state, and local tax requirements affect their company. Please speak with the Executive Director about referring the client to a private attorney.

Though CLA-LA may not be able to provide more specific assistance given our limited resources, the information below may give the client a general idea of some of the taxes the client's company may be required to pay.

How many members are involved in the particular LLC?

If there is only 1 member, then that member will report profits and losses by completing and submitting a Profit and Loss From a Business (Sole Proprietorship) Form (Form 1040 Schedule C) along with the member's regular individual income tax return. See www.irs.gov/pub/irs-pdf/f1040sc.pdf.

If there are 2 or more members, the LLC must file an annual information return with the IRS on its U.S. Return of Partnership Income Form (Form 1065). See www.irs.gov/pub/irs-pdf/f1065.pdf. Also, with two or more members, an LLC must submit the Partner's Share of Income, Deductions, Credits, etc. Form (Schedule K-1) for each member. See www.irs.gov/pub/irs-pdf/f1065sk1.pdf.

Does the client need to pay a self-employment tax?

A client who is actively involved in the affairs of the LLC must pay a self-employment tax. See www.irs.gov/taxtopics/tc554.html for more information. Due to the ever-changing nature of this tax, and its application to LLCs, the client should consult a tax attorney to understand how it applies to the client. Please speak with the Executive Director about referring the client to a private attorney.

C. Employment Agreements

An employment contract may be oral or written, express or implied. However, we recommend that these agreements be in writing and signed by both parties to ensure that all parties are aware of the others' rights and obligations.

For a general overview of the issues that may arise, please see the Employment Law section.

What should the client consider when negotiating an Employment Agreement?

- Whether employment is at will or fixed term employment;
- Responsibilities and job functions of employer/employee;
- Amount and type of compensation;
- Grounds and procedures (i.e. notice period) for termination;
- Limitations on an employee's ability to compete with the business while they are employed by the business;
    - Limitations on an employee's ability to compete with the business after the employee leaves (whether voluntarily or involuntarily) are generally not enforceable in California. See Cal. Bus. & Prof. C. § 16600; Hill Med. Corp. v. Wycoff, 103 Cal. Rptr. 2d 779, 784 (Cal. Ct. App. 2001).
- Protection of trade secrets and client lists; and
- Method for resolving disputes that arise over the course of employment.

Does the client need assistance with Talent Agent Agreements?

In California, the California Talent Agency Act requires that anyone acting as a talent agent must be licensed by the State. Cal. Lab. C. § 1700.5. In addition, all forms used and all contracts signed by artists must first be submitted to the California Labor Commission for approval. Cal. Lab. C. § 1700.23.

D. Independent Contractors

Many businesses routinely use the services of non-employees called "independent contractors." Independent contractors can generally be distinguished from employees by the fact that they are not under the direct control of the entity they are doing work for; rather, the entity has control of only the final work product. Cal. Lab. C. § 3353. Please note that there are many other factors to consider as well.

For more information on reporting whether or not a worker hired by the business entity is an independent contractor or employee, please visit http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Self-Employed-or-Employee and http://www.edd.ca.gov/payroll_taxes/independent_contractor_reporting.htm

What should be included in a General Independent Contractor Agreement?

- **Services to be Performed.** The key is that the agreement should describe in as much detail as possible what the contractor is expected to do. It must be worded carefully to show only the results expected, not how to achieve those results. Specifying "how" the work should be done would indicate that the worker is under the control of the hiring entity, making them an employee rather than an independent contractor.
- **Terms of Payment.** The agreement should determine whether full payment will be made at the end of work completed or whether there will be divided payments made throughout the work. Payment should be based on results, not time spent working on the project.
- **Expenses.** The contract should state who is responsible for expenses that incur throughout the project.
- **Independent Contractor Status.** The contract should state explicitly that the agreement is an independent-contractor relationship. This provision may include a clause expressly stating that the business is not responsible for general responsibilities such as tax withholdings and insurance coverage including workers compensation improvement.
- **Terminating the Agreement.** The contract should state that either party can terminate the agreement if the other party materially breaches the terms.

What are the tax consequences of hiring an independent contractor?

A business entity that hires an independent contractor may have to report the services received to the IRS and the California EDD. Please visit www.irs.gov and www.edd.ca.gov for more information.

III. Licensing Issues

California has over 50 different licensing agencies and professionals. Each business and profession has its own unique requirements, which can be found through the CALGOLD website: www.calgold.ca.gov/.

What grounds exist for rejection, suspension, or revocation of a license?

The basic principle of licensing procedures is consumer protection. Individuals can be prohibited from practicing a lawful profession only for reasons related to their fitness and competence for practicing the profession. Hughes v. Bd. of Architectural Examiners, 952 P.2d 641, 657-658 (Cal. 1998).

Under Cal. Bus. & Prof. C. § 480, the California licensing board is authorized to deny, revoke, or suspend an applicant's license if the applicant has:

- Pled guilty to or was convicted of a crime;
- Committed any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure another;

- Committed any act that, if done by the licentiate of the business or profession in question, would be grounds for suspension or revocation of license (the act must be substantially related to the qualifications, duties, or functions of the business); OR
- If applicant knowingly made a false statement of fact in his application.

Was the client's license denied, suspended, or revoked due to fraud or criminal acts?

No person shall be denied a license solely based on being convicted of

- A felony, if he has obtained a Certificate of Rehabilitation, Cal. Pen. C. §§ 4852.06 – 4852.07; or
- A misdemeanor, if the conviction was dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code (expunged) and the client can provide proof of such dismissal,

If the client believes the license was wrongfully denied or revoked, the client can **appeal** the negative action **within 90 days** of the date of the board's final decision. Cal. Civ. Proc. C. § 1094.6(b). If the client did not appeal the decision in time, he should **contact the department** that took the negative action and follow any corrective measures given by the department.

In the case of **minor convictions**, licensing agencies typically settle with applicants by granting **probationary or restricted licenses**. In these situations, the client should **contact the licensing body directly**, and submit all appropriate documentation that supports a favorable image of the client's character and conduct.

Applications involving serious convictions or a significant criminal history will almost certainly result in denial of the license, subject to an administrative hearing.

An applicant wishing to challenge an administrative hearing decision may file a *Writ of Administrative Mandamus* (or Writ of Mandate) to restore his license with the appropriate superior court. Cal. Civ. Proc. § 1094.5.

Was the client's license suspended by the Secretary of State (SoS) for failure to file annual Statement of Information?

First, the client must send a letter to the SoS with the delinquent Statement of Information and payment for any overdue fees and imposed penalties.

If the business name is still available, the SoS will return a *Notice of Revivor* to the client. If the business name is no longer available, the client will need to obtain a new business name and revise the Articles of Organization.

Was the client's license suspended by the California Franchise Tax Board?

First, the client must file **all delinquent tax returns and statements**, and pay all related taxes, interests, penalties, and fees.

Then, the client must file a **Certificate for Revivor** (FTB 3557 BC) with the Franchise Tax Board. If the business name is no longer available, the client will need to obtain a new business name and revise the Articles of Organization.

11. TAX

Clients who come to CLA-LA clinics with federal or state tax issues often feel lost and confused. Some may have failed to file tax returns for several years and may not know how to remedy the situation; others may be struggling to pay their back taxes.

Clients should be encouraged to communicate directly with the Internal Revenue Service (IRS) and the California Franchise Tax Board, to discuss the possibility of an installment payment plan. Severe problems should be referred, when possible, to a tax attorney.

As counselors, we should help clients not only with their immediate financial concerns, but also with the restoration of their sense of personal and financial responsibility.

CONTENTS

I. Obtaining Documents

Relevant documents to help resolve tax issues may include copies of tax returns, W-4 forms, and letters from the IRS or the California Franchise Tax Board. If the client did not bring the needed documents or if the client does not have copies of the needed documents, please help the client first obtain those documents; without those documents, we are limited in what we can do.

Does the client need a copy of their W-4 form?

A W-4 form must have been completed and submitted to the client's employer before the client received his first paycheck. See 26 U.S.C. § 3402(f)(2)(A), (3)(A). The employer must retain the most **current, signed W-4** in the employee's payroll file, so if the client needs a copy of their W-4 form, advise the client to request it from their employer.

The client may provide his employer with an updated W-4 form at any time and as often as needed. See 26 U.S.C. § 3402(f)(2)(B)-(C). The client need only complete and re-submit the form to his employer.

To download the W-4 form, please visit https://www.irs.gov/uac/about-form-w4.

Does the client need a copy of their wage and income information?

The client can obtain a Wage and Income Transcript for unfiled taxes from the IRS. They can also obtain a Tax Account Transcript for returns that has been filed, but has a balance on.

The client can obtain either transcript by calling the IRS toll free at (800) 829-1040, going to a local IRS Taxpayer Assistance Center, or visiting www.irs.gov/Individuals/Get-Transcript. Through the IRS website, the client can request that his transcript be mailed to him.

Does the client need a copy of their tax return?

If the client needs to obtain a record of their past tax returns, also referred to as a Tax Return Transcript, the client may request one by phone or by mail.

- Call the IRS at (800) 908-9946;
- Mail in a Request for Transcript of Tax Return (Form 4506-T) to the IRS, RAIVS Team, Stop 37106, Fresno, CA93888. Form 4506-T is available at www.irs.gov/pub/irs-pdf/f4506t.pdf.

II. Getting Help with Federal Taxes

Does the client have questions about his federal tax account?

If the client requires assistance with their federal tax account, encourage the client to visit their local IRS Taxpayer Assistance Center. The client will be able to meet with an individual who will work with them to address the issue. No appointment is necessary but check to see which services are provided at each center.

For the nearest Taxpayer Assistance Center, please visit www.irs.gov/uac/Contact-My-Local-Office-in-California.

Does the client seek assistance with preparing their tax return?

IRS Taxpayer Assistance Centers no longer assists with preparing tax returns, but the client may be eligible to receive such assistance from the **Volunteer Income Tax Assistance (VITA)** program. VITA offers free tax help to individuals who have an annual income of $53,000 or less, are disabled, are

elderly, or have limited English proficiency. See www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers.

To locate the nearest VITA site, please visit irs.treasury.gov/freetaxprep/ or call (800) 906-9887.

Before the client visits a VITA site, please advise them to review Publication 3676-B which details what **services** are generally provided and **what should be prepared**; the Publication is available at www.irs.gov/pub/irs-pdf/p3676bsp.pdf.

Does the client have questions about the Affordable Care Act (ACA) penalty?

The **Affordable Care Act**, passed in 2014, requires that individuals obtain health insurance or else be subject to tax penalties. However, the client may be **exempt from the tax penalty** for failing to obtain medical insurance if they meet certain criteria such as:

- **Income Below the Filing Threshold** - The client's gross income or the client's household income was less than the applicable minimum threshold for filing a tax return.
- **Coverage Considered Unaffordable** - The minimum amount the client would have paid for premiums is more than 8% of their household income.
- **Incarceration** - The client was in jail, prison, or similar penal institution or correctional facility after the disposition of charges.
- **General Hardship** - The client experienced a hardship that prevented them from obtaining coverage under a qualified health plan.

To file an exemption, Form 8965 **must be filed with the client's tax return**. Only one Form 8965 is required per household. If the client can be claimed as a dependent by another taxpayer, they do not need to file Form 8965 and do not owe a shared responsibility payment. For more information and a complete list of exemptions, see https://www.healthcare.gov/health-coverage-exemptions/exemptions-from-the-fee/.

Individuals with very low income, such as those who come to CLA-LA clinics, may be eligible for **healthcare insurance premium subsidies** through the **Covered California** insurance exchange. For more information, see the Healthcare Benefits section.

If the client has questions about these exemptions, they should go to **Covered California**. Options for getting help can be found at http://www.coveredca.com/get-help/.

III. Federal Back Taxes

Some clients have not paid taxes because they do not have the income. Inform the client that the IRS is not always willing to negotiate, but it will be more receptive if the client is the first to come forward. See more information on the **IRS Fresh Start program** at https://www.irs.gov/uac/newsroom/irs-fresh-start-

program-helps-taxpayers-who-owe-the-irs/. If the client is unable to make any payments, advise them to apply for **currently not collectible status** (below).

For more information on the IRS and taxes, go to www.irs.gov/uac/Ten-Tips-for-Taxpayers-Who-Owe-Money-to-the-IRS.

Taxes are dischargeable in **bankruptcy**, but there are **stringent requirements** and bankruptcy may not be the right choice for most. Most clients can resolve their tax issues by **negotiating with the state.** If necessary, refer out to a tax or bankruptcy attorney.

How can the client request a monthly installment plan?

With an installment plan, the client negotiates a monthly payment plan (valid for 72 months). If an installment plan is established, the interest and penalties continue to accrue.

Before the client applies, they must:

- File all required tax returns;
- Consider other financial sources to satisfy the tax debt;
- Determine the largest monthly payment they can make ($25 minimum);
- Understand that their future refunds will be applied to their tax debt until it is paid.

If the client owes **$50,000 or less,** advise them to file online at www.irs.gov/Individuals/Online-Payment-Agreement-Application.

If the client owes **more than $50,000**, help them complete an Installment Agreement Request (Form 9465) and a Collection Information Statement (Form 433-F).

The fee for an installment plan is $105 which can be reduced to $52 if the client enrolls into an e-withdraw. Low income clients may qualify for a reduced fee of $43.

For more information, see https://www.irs.gov/individuals/payment-plans-installment-agreements.

How can the client request a Partial Payment Installment Plan?

With a partial payment installment plan, only a portion of the total debt is to be paid off in monthly payments. Once paid, the remainder is forgiven. Note: this plan is hard to negotiate or obtain.

Before the client applies, they must:

- File all required tax returns;
- Consider other sources to pay their tax debt in full;
- Determine the largest monthly payment they can make ($25 minimum);
- Know that their future refunds will be applied to their tax debt until it is paid.

Process:

- Complete a Collection Information Statement for Wage Earners (Form 433-A) to determine the client's ability to pay. Compile and attach 3 months of documentation of all reported income and expenses.
- Complete an Installment Agreement Request (Form 9465).
- Write a letter stating the client's request for a partial payment installment plan (just a simple letter is enough).
- Submit the written letter, Form 9465, and Form 433-A to the IRS Revenue Officer handling their case, or to their nearest IRS Service Center. The IRS should respond within 30 days.

How can the client make an Offer in Compromise?

When offering a compromise, the client specifies an amount they wishes to pay, and they must pay off the proposed amount within 24 months of the date the offer is accepted. For more information, see § 5.8.5.27 of the Internal Revenue Manual, available at www.irs.gov/irm/part5/irm_05-008-005r.html#d0e236.

An Offer in Compromise request may take several months to approve, will result in a more detailed examination, and is hard to obtain.

Before the client applies, they must:

- File all required tax returns; and
- Make all required estimated tax payments for the current year.

To make an Offer in Compromise, the client must generally:

- Complete and submit an Offer in Compromise (Form 656);
- Complete and submit a Collection Information Statement for Wage Earners (Form 433-A), along with 3 months of documentation of all income and expenses reported;
- Pay the $186 application fee; and
- Include the initial offer payment.

This is a complicated process; for information and detailed instructions, please refer to www.irs.gov/pub/irs-pdf/f656b.pdf and www.irs.gov/Individuals/Offer-in-Compromise-1.

If the Offer of Compromise is rejected, the client has 30 days to appeal (mediation is available – see IRS Disputes section) or provide a revised offer.

How can the client request Currently Not Collectible status?

The IRS can grant the client currently not collectible (CNC) status if it determines that the client is unable to pay. The IRS then stops all collection. To qualify, the client must prove that they do not own any assets to pay the back taxes.

Process:

- Submit a Collection Information Statement for Wage Earners (Form 433-A);
- Submit a copy of the client's last tax return;
- Submit proof of all current expenses for the last 3 months;
- Submit a statement of all transportation expenses for the last 3 months;
- Submit a statement of health care expenses for the last 3 months;
- Submit proof of any court-ordered payments for the last 3 months.

If granted, the client's CNC status will usually last 18 to 24 months. While the client is on CNC status, the IRS will monitor their financial situation by reviewing credit reports to see if the client remains eligible. The IRS statute of limitation continues to run while the client is on CNC status.

At the end of the CNC period, the client will need to show that their economic situation has not changed or else they may still be held responsible for some or all of the back taxes.

IV. IRS Disputes

Does the client's issue fall within the applicable statute of limitations?

The IRS has its own statute of limitations. Please check below to see if the client's issue falls outside the applicable time period.

- **Claiming a Refund**: 3 years from deadline of original tax filing or 2 years from when tax was actually paid, whichever period expires later. 26 U.S.C. § 6511(a).
- **IRS Auditing a Tax Return**: 3 years from the filing deadline (April 15th) if filed early or on time; or 3 years from actual filing if filed after April 15th. 26 U.S.C. § 6501(a).
- **IRS Collecting Outstanding Tax Liability**: 10 years from the day a tax liability has been finalized (although collection can be suspended under certain conditions). 26 U.S.C. § 6502.

Was the client's tax return selected for examination (audit)?

While most returns are accepted as filed, some are selected for **examination**. If the client's return has been selected, it is imperative that the client respond to the IRS and **provide ALL requested information**. Please help/encourage the client to carefully review the examination letter sent by the IRS.

If the client **disagrees with the IRS on his tax matters after examination,** the IRS has an administrative appeals process that works with taxpayers to settle tax disputes. The examination letter sent by the IRS will outline important information for a client seeking an appeal. It will state:

- How to prepare a request for an appeal;
- Where to mail the request;
- When the request must be received; and
- What information the client needs to include to show that the amount the IRS is claiming is incorrect.

A formal written protest must be sent within the time period permitted in the letter sent by the IRS; typically, the time permitted is 30 days from the date of the letter. If a 90-day letter has been received by the IRS, there is a 90 day time period for a response to be submitted. For more information about the appeals process, please visit www.irs.gov/Individuals/Preparing-a-Request-for-Appeals-1.

For more information about the examination process, see www.irs.gov/pub/irs-pdf/p556.pdf.

Does the client need assistance resolving a dispute with the IRS?

If the client is a low-income tax payer who needs help resolving a dispute with the IRS, they may qualify for free or low-cost assistance from a **Low Income Taxpayer Clinic (LITC)**. If the client is eligible, the LITC will assist with audits, appeals, collection matters, and even federal tax litigation. To determine whether the client qualifies for LITC services or to find an LITC clinic, visit www.irs.gov/Advocate/Low-Income-Taxpayer-Clinics/Low-Income-Taxpayer-Clinic-Income-Eligibility-Guidelines.

If the client does not meet the low-income threshold for LITC services, they may be eligible for assistance from the **Taxpayer Advocate Service (TAS)**. TAS is an independent organization within the IRS, and its purpose is to ensure that every taxpayer knows and understands their rights; it will help taxpayers whose problems with the IRS are causing financial difficulties. Every state has at least one **Local Taxpayer Advocate (LTA)** who can assist eligible taxpayers.

- To find LTA contact information in California, visit www.irs.gov/Advocate/Local-Taxpayer-Advocate#California or call the TAS toll free at (877) 777-4778.
- The client can request assistance from the Los Angeles LTA by calling (213) 576-3140, or by completing and mailing a Request for Taxpayer Advocate Service Assistance (Form 911) to 300 N. Los Angeles St., Room 5109, Stop 6710, Los Angeles, CA 90012. Form 911 is available at www.irs.gov/pub/irs-pdf/f911.pdf.

The IRS offers **fast track mediation (FTM)** services to help taxpayers resolve many disputes resulting from: examinations (audits), Offers in Compromise, trust fund recovery penalties, and other collection actions. To be considered for FTM, the client must **first try to resolve all issues with the IRS**. This includes working with the IRS revenue officer and a conference with the officer's manager.

To apply for FTM, the client must send their IRS revenue officer:

- Completed Agreement to Mediate, Form 13369
- A written statement detailing your position on the disputed issue(s)

For additional information see:

- Appeals Mediation Program Online Self-Help Tool: http://www.irs.gov/Individuals/Appeals-Mediation-Self-Help-Tool
- Revenue Procedure 2003-41
- Publication 3605 - Fast Track Mediation, A Process for Prompt Resolution of Tax Issues

V. CA State Taxes

CLA-LA can help clients having issues with **California state income taxes**. The process is similar to the one for federal taxes. If the client is behind on paying their state income tax, they should speak with the California Franchise Tax Board directly and ask for an installment agreement or provide an offer in compromise.

Taxes are dischargeable in bankruptcy, but there are stringent requirements and bankruptcy may not be the right choice for most. Most clients can resolve their tax issues by negotiating with the state. If necessary, refer out to a tax or bankruptcy attorney.

Can the client negotiate a monthly payment plan?

With an installment plan, the client negotiates a monthly payment plan (valid for 60 months).

Eligibility Requirements:

- Tax liability does not exceed $25,000;
- The installment period for payment does not exceed 60 months;
- The client has filed all required tax returns;
- The client does not have an existing installment agreement; and
- The client does not have an Order to Withhold, Continuous Order to Withhold, or Earnings Withholding Order for Taxes against them.

Process:

- File online at www.ftb.ca.gov/online/eIA/Apply_Online.asp; OR
- Apply by phone at (800) 689-4776, Monday to Friday, 8:00 am to 5:00 pm; OR
- Complete and mail an Installment Agreement Request (FTB 3567), www.ftb.ca.gov/forms/misc/3567.pdf. The client should receive written notification from the state within 30 days.

For more information, visit www.ftb.ca.gov/online/eia/index.asp.

Can the client negotiate an "offer in compromise"?

If the client cannot pay the tax liability now or in the foreseeable future, they may offer a lump sum of a lesser amount for payment. The Offer in Compromise must be the most that the state can expect to collect within a reasonable period of time.

Caution the client about the **difficulty** of negotiating an Offer in Compromise – the state will **reject** an offer if the client can simply pay it off in installments over a longer time period.

Before the client applies, they must:

- Have filed all required tax returns;
- Completed application and provided all supporting documentation;
- Agreed with the Franchise Tax Board on amount of tax owed; and
- Authorized the Franchise Tax Board to obtain their consumer credit report.

Process:

- Complete and mail an Offer in Compromise for Individuals (FTB 4905PIT). The form is available at www.ftb.ca.gov/forms/misc/4905pit.PDF; OR
- Apply by phone at (800) 338-0505. Select "personal income tax form requests," and enter code 971 when prompted.

For more information, visit www.ftb.ca.gov/bills_and_notices/OIC.shtml.

12. NEGOTIATION AND MEDIATION

At CLA-LA, we hope lawyers step beyond the role of mere scriveners and **truly counsel clients on how to handle their disputes**. It is often difficult for attorneys to discuss the more personal aspects of conflicts with their clients, but it is important that we begin the healing process by encouraging our clients to communicate directly with the party that has upset them.

For various reasons, **many of our clients have not attempted to directly communicate with the disputing party**. By encouraging negotiation and mediation, CLA-LA can help clients find solutions to their legal problems while keeping the courts out of their affairs until it is absolutely necessary.

Negotiation is simply any structured communication between parties for the purpose of reaching an agreement.

Mediation is a more specific process. Mediation is a method of dispute resolution where a neutral third party (a mediator) helps conflicting parties reach a mutually satisfactory agreement that is recorded as an enforceable contract.

I. Negotiation and Mediation Basics

Why should the client attempt to negotiate and mediate first?

Those who struggle with injustice often want the courts to determine they are right and thus may forgo communicating with the other person. It is here the attorney volunteer can explain the reasons why the court should be a last resort.

Please inform the client of the benefits of negotiating and mediating first:

- **It is cost effective** -- having a direct conversation is free! There are no attorney or court fees associated with negotiating, and any associated costs for mediating are less than what they would be for litigating the issue.
- **It is less time consuming** to negotiate or mediate than litigate the issue. Recent budget cutbacks have slowed the legal system. With 97% of all matters settling before trial, it is important to see if there is a way to settle a dispute without the court; this is especially true if the dispute needs a quick solution.
- In some legal areas (i.e., family, small claims, and housing) **the judge will refuse to hear the case** until the parties have attempted to resolve the dispute on their own.
- Negotiated agreements are **more flexible** as they may include provisions that are favorable to both parties which a judge would never include. A court can only address those issues that are raised in the arguments and are properly under its jurisdiction. The court is less concerned with

the non-legal or personal needs of the parties, and often these personal needs are the clients' paramount concerns.

- In both negotiation and mediation, **parties retain the decision-making power**. If a party feels that a proposal is not fair, they do not have to sign the settlement, and may pursue their other legal remedies.
- Direct negotiations and mediations **remain private**. No third party (the court or an attorney) becomes privy to the client's dispute.

Is the client prepared to negotiate or mediate?

To effectively negotiate or mediate with the other party, the client must be able to accept responsibility for their past actions and engage in mature, compassionate discussions. Please consider the following questions to determine whether the client must first address any other personal issues before engaging with the other party.

- Is the client sober?
- Is the client sincerely interested in compromising with the other party?
- Is the client mentally stable?
- Has the client been making positive and healthy decisions for themselves?
- Does the client have housing?
- Has the client completed all required rehab programs?
- Has the client taken responsible parenting classes?
- Has the client completed anger management courses?
- Has the client complied with any probation?
- Is the client currently working?

If the client appears unwilling or unable to sincerely negotiate or mediate with the other party at this time, please encourage them to make the appropriate changes before reaching out to the other party.

Mediation/negotiation does not "stop the clock." Statutes of limitation, filing deadlines, and other time-sensitive issue must still be addressed and complied with even if you are pursuing other means of resolution.

How should the client invite the other party to negotiate or mediate?

The client should invite the other party to negotiate or mediate through whichever means of communication is common between the parties.

Verbal communication is often the best way to invite the other party to negotiate or mediate because important nonverbal subtleties (such as vocal inflections, facial expressions, and tone of voice), build trust and good rapport. Talk to the client about what they want to say in opening up the dialogue. A verbal invitation may include:

- A sincere apology of the client's ownership of past wrongs;
- Acknowledgement of the other's interest in this dispute; and

- A short statement of what the client wants to discuss with the other party and request to talk further when possible.

If the client wants to **send a written invitation** to the other party, please help them draft a written request (letter, email, or text) that is short, direct, and compassionate. Please be sure to capture the client's voice.

The invitation should NOT come from CLA-LA; do not use the CLA-LA letterhead. The client should know that this is not a demand letter nor should it make threats. It should express that the best solution will be one in which both sides meet each other half way.

SAMPLE MEDIATION LETTER

Dear _____,

Though we have discussed _____, we cannot seem to come to an agreement. I know we both want _____, and I am hopeful we can resolve our differences. I recently went to a legal-aid clinic to try to learn about other ways we could try to resolve our differences, and the lawyers recommended that we try to use free mediation to help us, rather than getting the courts involved. I prefer to try meeting with someone outside the court system before I ask the court to modify the order.

I would really like to try to schedule the mediation as soon as possible, and relieve the tension this problem is causing. Please let me know if you are available on _____ to attend a free mediation.

I will need to confirm this schedule with the neutral, third party mediator by _____, so please let me know within 5 days if you would like to try to mediate this dispute. I really believe we can solve this problem ourselves, without getting the courts further involved in this business.

Thank you.

Many mediation service providers will assist with the "convening" process, and may be willing to reach out directly to the other party or assist the client in doing so. If there is no response after 2 weeks, the client should follow-up and exercise patience as there are sometimes reasons for the delay.

How should the client prepare for negotiation or mediation?

If the other party agrees to negotiate or mediate, the client should prepare for the meeting by answering the following questions:

- What does the other party want?
- Why has the other party refused to compromise in the past?
    - Are the other party's reasons for refusing compromise valid?
    - How can the client address the other party's concerns?
- What motivates the other party (i.e., values, faith)?
- What possible unfavorable outcomes might result if the parties litigate?
- What does the client regret about how he handled past situations?
- How can the other party address the client's concerns?

Remind the client that it is okay to compromise with the other party. If the client expects grace, the client must first be willing to give that much grace, plus some, to the other party.

What should the client do after the negotiation or mediation?

If negotiation or mediation was successful, the client should have the agreed upon terms written down in a document that is signed and dated by both parties. Each party should retain a copy of the agreement, and, if needed, the client should also file a copy with the court.

If **negotiation** did not resolve the dispute, invite the other party to mediate. Because mediation involves a neutral, third party individual who guides the conversation along, it may be easier to find a satisfactory resolution.

If **mediation** did not resolve the dispute, the client should consider obtaining ongoing legal assistance and prepare to litigate the issue. The client may also consider abandoning the issue if the cost of litigation is likely to exceed the likely recovery or relief.

II. Mediation Info and Resources

Is the client familiar with the mediation process?

There are four basic stages of mediation: convening, communicating, collaborating and closing.

- Convening - The mediator will answer questions and ask that parties be open to compromise. Convening acts as an introduction to and an outline of the process that follows.
- Communicating - Each party will have the opportunity to explain the conflict from their point of view. The goal here is to bring all elements of the conflict to the table (anger, hurt, resentment, consequences of the past, etc.).
- Collaborating - When collaborating, the mediator may choose to hold private caucuses in which the parties are separated and spoken to individually. While the mediator relays ideas and offers between the parties during this stage, it is also the time for creative solutions to be discussed.
- Closing - The mediator will review any and all agreed-upon terms to ensure each party understands what it is they are agreeing to.

Mediation is a process that ultimately leaves the power to make decisions with the parties. While it is always a goal to help parties settle their dispute through mediation, clients should not agree to an arrangement or contract that they do not fully understand.

The client should also be informed of the following:

- Generally, everything said during a session is **confidential.** The major exception to this rule is for Family Law regarding child custody and visitation, where in California, judges sometimes ask mediators to make recommendations if all issues are not resolved. See Cal. Fam. C. § 3183. In this case, a mediated agreement (if one was reached) may be disclosed in a court of law.
- Though the client may ask for the mediator's legal opinion on certain issues, the mediator will generally **refrain from giving any legal advice** or making any judgment on the client's claim.

- It would not be ethical for a mediator to suggest parties agree to a settlement that clearly favors one party at the expense of the other. That said, the client should be reminded that fairness is a sliding scale, and **that ultimately the parties will have to decide what is fair** and can be agreed to.

Where can the client obtain mediation services?

Asian Pacific American Dispute Resolution Center (APADRC)

- About: APADRC is a 501(c)(3) nonprofit organization that provides mediation and conflict resolution services to the diverse communities in the Los Angeles area. Their expertise is offering mediation and conflict resolution services in a variety of Asian languages, including Chinese, Korean, Japanese, Tagalog, Vietnamese (and sometimes Hindi and Urdu), as well as English and Spanish.
- Cost: There is a $20 admin fee. However, the APADRC will never turn a client away for lack of funds, and this fee may be waived.
- Contact: (213) 250-8190; http://apadrc.org/

Department of Consumer Affairs for Los Angeles County (DCA)

- About: The DCA offers free mediation services, both community and court-connected, to the residents and businesses of Los Angeles County. They handle disputes between landlords and tenants, businesses and customers, neighbors, family members or roommates, contractors and homeowners, and homeowner associations. Additionally, the Department of Consumer Affairs is the only government agency that is a provider for court-connected mediation. DCA conducts on-the-spot mediation in Los Angeles County Superior Court, with cases ranging from Limited Civil jurisdiction litigation, to Unlawful Detainer and Small Claims cases.
- Cost: Free
- Contact: (800) 593-8222; http://dca.lacounty.gov/; County of Los Angeles Department of Consumer Affairs, 500 W. Temple St. Room B96, Los Angeles, CA 90012

Los Angeles City Attorney's Dispute Resolution Program

- About: The Dispute Resolution Program mediates all types of civil disputes. (Including business, community, consumer/merchant, employment, HIV/AIDS discrimination, landlord/tenant, ethnicity or race discrimination, neighbor, school, violence prevention.) Interpreters provided for non-English speakers. The DRP provides additional free services including information referrals, problem assessment, conciliation, facilitation, fact-finding, and consultation.
- Cost: Free (for Los Angeles County residents/businesses)
- Contact: (213) 978-1880; mediate@lacity.org; Office of the Los Angeles City Attorney Dispute Resolution Program, City Hall, 200 North Spring Street, 14th Floor, Los Angeles, CA. 90012.

The Center for Conflict Resolution (Loyola Law School)

- About: The CCR provides mediation, conciliation and facilitation services, and conflict resolution training to the communities throughout Los Angeles County. These services are provided in English and Spanish. The CCR's services are confidential.
- Cost: No one will be charged a fee for the services of The CCR who cannot afford to pay. A sliding fee schedule will be used for those who can afford to pay.

- Contact: (213) 736-1145; www.lls.edu/CCR; The Center for Conflict Resolution, 800 S. Figueroa St., Suite 1140, Los Angeles, CA 90017

The Center for Civic Mediation

- About: The Center is proud to offer a new specialized mediation program for **families**, as well as **elder care** mediation. In addition, the Center can address issues such as:
    - Landlord/Tenant
    - Consumer/Merchant
    - Elder Care
    - Neighbor/Neighbor
    - Interpersonal
    - HOA
    - Property
    - Small Business
    - Family/Divorce
    - Small Claims
    - Employment
    - Ownership
    - Domestic Relations
    - Complex Multi-Party
- Location: Intake can be conducted over the phone. Mediation sessions can be scheduled at a mutually convenient time and location (Los Angeles, Long Beach, Pasadena, Santa Monica, South Bay, West Hollywood) including evenings and Saturdays to accommodate participants' schedules.
- Cost: There is no cost for the first three (3) hours of mediation, and most disputes are resolved within that time. If subsequent mediation sessions are needed and agreed to by the participants, the charge for additional sessions will be based on the mediator's hourly rate. If the parties cannot afford to pay, fees are waived. No subsequent mediation(s) will be scheduled unless participants mutually agree to have additional sessions.
- Contact: 877-4RESOLV (877-473-7658); http://centerforcivicmediation.org/

Quick Reference