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## MEMORANDUM OF LAW

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**Re: How to Judge a Lawyer**

**Date: March 21, 2014**

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It is nearly an undeniable fact that most people will be involved in a legal issue at some point in their lives. Some will be involved in car accidents, while others may have the unfortunate circumstance of being involved in a criminal trial. But regardless of the situation, choosing the right lawyer to represent you will be one of the most important decision you will have to make when faced with a difficult legal issue. The following is a list of resources and criteria that will help you find a lawyer and evaluate whether that lawyer is a perfect fit for you.

### I. FINDING A LAWYER

#### A. Personal Referrals

Most people begin their search for a lawyer by asking people they trust for recommendations. Asking your family and friends about whether they know a lawyer or can direct you to one that they have used in the past can be particularly helpful, especially if more than one person recommends the same lawyer. Even if the referral directs you to a lawyer who is not an expert on your particular legal issue, he or she may be able to recommend someone who is.

However, keep in mind that this does not necessarily mean the attorney you are referred to is the best choice for you. There are a number of different factors that you should consider before you decide to retain a lawyer. These factors will be explained in more detail below.

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## **B. Advertisements**

Another way to find a lawyer is by checking phone books, newspapers, buses, the television, radio, and the Internet for advertisements. Advertisements for legal services may list the attorney's area of expertise and their potential fees. Looking at advertisements can help you build and narrow a list of potential lawyers to contact about your particular case.

## **C. Internet Searches**

With the increased availability and convenience of the Internet, there has been a sharp increase of lawyer directories and web sites. It is important to know how to navigate lawyer directories and web sites to find what you're looking for.

### **1. Lawyer Directories**

"Premier lawyer" directors and referral or match directories are two specific types of lawyer directories that have become more common - and in the lawyer community more controversial.<sup>1</sup>

#### **i. Premier Lawyer Directories**

"Premier lawyer" directories have been around for many years, such as Best Lawyers and Martindale. These lists are set up to help people find an attorney in their location. For example, you can conduct a simple search for an attorney based on the type of legal issue you are facing. You can then narrow that search to your location. The list of attorneys should be that of attorneys practicing the type of law relevant to your legal issue in your location. Such list results will provide you with information on the attorney, such as his or her practice area, contact information, bar association, and often peer and client reviews.

In recent years, these directories have become increasingly more popular. But, these premier lawyer listings have become controversial because lawyers often use advertising content to compare the quality of his or her services to those of other lawyers.<sup>2</sup> However, unless the comparison can be factually verified, such advertising techniques are thought to contravene longstanding regulations that prohibit this type of advertising. For example, a firm can say it's the "oldest" firm practicing law in Los Angeles

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<sup>1</sup> MICHAEL DOWNEY, INTRODUCTION TO LAW FIRM PRACTICE 183 (2010).

<sup>2</sup> *Id.* at 183-184.

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because that can be factually verified. But a lawyer advertising that he is the “best” trial attorney in Los Angeles is a statement that cannot be factually verified. Do not rely heavily on such advertising phraseology.

Also be aware that critics of these types of directories often believe a lawyers’ presence on such lists are only an indication of a lawyers’ ability to pay to be on the list rather than the lawyers’ abilities to handle legal matters.<sup>3</sup> Lawyers may even exaggerate the significance of their inclusion on the list and claim they are “premier lawyers” instead of merely stating that they are “listed on” or “included in” a particular premier lawyer list.<sup>4</sup> It may be difficult to determine a paid advertisement from a non-paid one, but some web sites will actually say so through a disclaimer.

## ii. Referral or Match Directories

“Referral or match” directories are search engines that normally allow potential clients to conduct a search and identify lawyers who engage in certain types of practices within a certain location. Depending on the directory you may have to enter a brief description of your case, your name, e-mail address, and phone number. The listed lawyers normally pay to be included in the match service.

There are also ethical issues attached to these types of directories because these sites often have non-lawyers screen cases and determine which listed lawyers should receive notice of potential client inquiries. In some states, this kind of screening can be considered the unauthorized practice of law.

## 2. Lawyer or Law Firm Web Sites

Instead of using a directory, you may just happen upon a lawyer’s or law firm’s web site. There are a few things to be knowledgeable of when viewing these web sites. First, if you are conducting an Internet search by legal issue, some search engines will often look through the text of web sites to find the key words and rank the web sites according to the number of times those key words are used.<sup>5</sup> Some search engines will even search information programmed into the web page but not viewable by the

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<sup>3</sup> *Id.* at 184.

<sup>4</sup> *Id.*

<sup>5</sup> EDWARD POLL, ATTORNEY AND LAW FIRM GUIDE TO THE BUSINESS OF LAW 138 (2d ed. 2002).

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browser.<sup>6</sup> Thus, the first lawyer or law firm to be listed in an Internet search doesn't necessarily mean they are the best fit for you, it just means that their web site has utilized these search options successfully.

Second, some web sites will provide testimonials from past clients. Such testimonials tend to invoke extremely high expectations. But keep in mind that everyone's case is different, and you may not get the same outcome as the person who made the testimonial. Also, as mentioned above, statements such as "the best trial attorney" and "highly qualified" are not factually verifiable statements so don't let that be a determining factor for hiring a lawyer. Meaningful factors that you should consider when evaluating an attorney are his or her: (1) years of experience; (2) areas of practice; (3) specialization; (4) number of cases tried to a jury; (5) law firm size, and (6) fees and costs.

## II. EVALUATING A LAWYER

### A. Lawyer Qualifications

#### 1. Experience

Generally, a web site or directory will indicate when a particular attorney has been admitted to the state bar. Being admitted to a state bar means they are licensed to practice law in that state. If this information is not readily available, be sure to ask during your initial phone call or interview with the attorney. You will want to know if the lawyer is a veteran or if he or she has just been admitted to the bar. Your legal issue may very well be handled by someone fresh out of law school, but it will depend on a number of things, such as the complexity of the issue and whether there are time constraints.

An experienced attorney will be able to provide you with a rough time line of events, when certain documents need to be drafted and filed, and when certain court proceedings will occur. Generally an experienced attorney will be more familiar with courtroom procedure and local judges, and his or her staff will likely have good relationships with court clerks, which often helps with document filings and scheduling.<sup>7</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> Brette McWhorter Sember, *How to Evaluate an Attorney*, DIVORCE MAGAZINE, [http://www.divorcemag.com/articles/Divorce\\_Lawyers/divorce-lawyer-divorce-attorney.html](http://www.divorcemag.com/articles/Divorce_Lawyers/divorce-lawyer-divorce-attorney.html) (last visited Mar. 3, 2014)

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Most often a web site or directory will also list the “practice areas” of a lawyer or law firm. If the lawyers listed practice area deals with your legal issue, ask them how many years they have been practicing in that area of law. This is important because an attorney who has focused in one or two areas of law for a substantial amount of time will likely have handled a larger number of cases similar to yours. Attorneys with experience in a particular area of law may also be in a better position to foresee problems with your case, find solutions to those problems and provide you with a realistic goal.

## 2. Areas of Practice

Traditionally, law firms have been divided into three types of practices: “general practice” firms, “consumer-focused” firms (firms that primarily seek to deliver legal service to individuals), and “corporate-focused” firms (firms that target their services to corporate entities, non-profit organizations, and sometimes wealthy families).<sup>8</sup>

A traditional “general practice” firm has one or two lawyers who provide all types of legal services. These are common in smaller communities, where a lawyer may serve various clients on virtually all types of legal matters.<sup>9</sup> A rural, solo attorney may represent clients in a multi-million dollar plaintiff’s case, divorce, driving under the influence, trust and estates, and corporate formation matters.<sup>10</sup>

A typical high volume “consumer-focused” firm includes traffic law firms, personal injury and worker’s compensation firms, basic trust and estate practices, and consumer bankruptcy firms.<sup>11</sup>

A typical “corporate-focused” firm will handle legal work for companies and may provide a very broad or narrow set of legal services.<sup>12</sup> Large firms often offer business, tax, litigation, environmental, employment, banking, real estate, white collar defense, and virtually any other type of law that a company might want.<sup>13</sup>

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<sup>8</sup> Downey, *supra* note 1, at 18.

<sup>9</sup> *Id.* at 84.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 86.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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More limited firms, sometimes referred to as “boutiques” (discussed more in depth below), have also long existed to provide a narrower focus of service to clients. Boutique firms can often cater to individual needs as well as corporate needs.

Choosing a lawyer or law firm based on the practice area is going to depend on what capacity you intend to sue or if you or your company is being sued. More importantly, choosing a lawyer or law firm will also be based on the legal issue(s) involved.

### 3. Specialization

Not only should you find a lawyer that practices in the area of law that deals with your legal issue(s), you should also try to find a lawyer who specializes in that area of law. Hiring a lawyer that “dabbles” in different areas of law can often result in potential risks.<sup>14</sup> It’s one thing for a *law firm* to have a long list of practice areas because generally different lawyers within the firm will focus their practice on one or two areas of law, not all. But be aware of a lawyer that list a long and varied group of practices. This is normally an indication that the lawyer does not know each area of practice very well.<sup>15</sup>

Every lawyer has some basic understanding of the legal system. But much like doctors or other professionals, lawyers can have an area of expertise.<sup>16</sup> You may have a lawyer who you’ve trusted to handle your business transactions because that is his expertise; however, it may not be a good idea to use him or her if you have a family law issue. You are going to want to find an attorney who specializes in family law. What other areas of law are considered highly specialized? Some examples are patents and intellectual property, maritime, civil rights, and tax law.

In California, lawyers can become State Bar certified specialists. This certification program offers attorneys the opportunity to demonstrate high competence through evaluations by a panel of experts in one of eleven areas of law practice.<sup>17</sup> Those eleven areas include: admiralty and maritime; appellate;

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<sup>14</sup> *Id.* at 195.

<sup>15</sup> *Id.*

<sup>16</sup> Alan Henry, *How to Find a Reputable Lawyer*, LIFE HACKER, <http://lifehacker.com/5826959/how-to-find-a-reputable-lawyer> (last visited Mar. 20, 2014).

<sup>17</sup> *Rules Governing the State Bar of California Program for Certifying Legal Specialists*, CAL. BAR ASSOC., <http://rules.calbar.ca.gov/LinkClick.aspx?fileticket=J4JjKpi5lp0%3d&tabid=1149> (last visited Mar. 20,

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bankruptcy; criminal; estate planning; trust and probate; family; franchise and distribution; immigration and nationality; legal malpractice; taxation; and worker's compensation.<sup>18</sup>

In order to qualify for the certification, a lawyer must have practiced law continuously for five years, and in each of those five years he or she must have practiced law in the area in which they are seeking the certification for at least 25% of their time working. The lawyer must also pass a written examination.<sup>19</sup> Therefore, certified specialist have demonstrated a high level of experience in the specialty field, passed a written examination, fulfilled ongoing education requirements, and have been favorably evaluated by other attorneys and judges familiar with their work.<sup>20</sup> Only these attorneys can advertise or identify themselves as "certified" specialists in California.<sup>21</sup>

However, there are lawyers with experience in all of these legal areas who may simply choose not to seek certification. You should ask the lawyer your interested in if they specialize in the area of law that your issue is in, how many years they have been practicing that type of law, and what additional training or education they may have had that makes them specialized.

Some people think that specialists are going to be expensive. If an attorney truly is specialized in a certain area of law, it is true that they may charge a little more than your general practitioner. However, you are more than likely going to save money in the long run because although newer lawyers or general practitioners will charge you less hourly, they may spend far more time preparing your case than an experienced, specialized attorney would.

Furthermore, in California, an attorney has a duty to refer a client to an expert or recommend the assistance of an expert if under the circumstances a reasonably careful and skillful practitioner would do so.<sup>22</sup> Thus, in the end you may be referred to a specialist simply because your case calls for one.

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<sup>18</sup> *Id.*

<sup>19</sup> *Frequently Asked Questions*, CAL. BAR ASSOC., <http://ls.calbar.ca.gov/LegalSpecializaion/FAQ.aspx> (last visited Mar. 20, 2014).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> CAL. CIV. PRAC. TORTS § 33:17.

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#### 4. Number of Cases Tried to a Jury

In certain cases it will be important to retain a lawyer who has trial experience. It may be inevitable that neither side of the lawsuit wishes to settle. If it comes to that point, you are going to trial, and you're going to want to have a lawyer who knows his or her way around the courtroom and how to handle the intense stress and long hours of conducting trial.<sup>23</sup>

You will also want to know if the cases the lawyer has tried were bench trials (where the judge decides the guilt or fault of a party), or jury trials, (where twelve jurors selected from the community decide the guilt or fault of a party). The more jury trials a lawyer has taken on, the better that lawyer can appreciate the risks and benefits of taking certain cases to trial and which will likely do better in front of a jury.<sup>24</sup>

Another important reason to retain a lawyer with trial experience is the credibility that he or she has when negotiating with the opposing party. Many attorneys and their clients don't want to have to go to trial because it can be extremely time consuming, expensive, and the outcome isn't usually predictable. Thus, if your attorney has the reputation for not shying away from a trial, it will likely strengthen his bargaining power during settlement negotiations.<sup>25</sup> However, if the opposing attorney knows that he or she is up against a lawyer that has never gone to trial, or has not gone to trial in many years, it is likely they will use that information to drive a hard bargain during settlement negotiations.<sup>26</sup>

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<sup>23</sup> James Cotter, *How Important is Your Lawyer's Trial Experience in a Personal Injury Case?*, PERSONAL INJURY LAWYERS BLOG, <http://accident-injury-lawyers.ca/2010/11/17/how-important-is-your-lawyers-trial-experience-in-a-personal-injury-case/> (last visited Mar. 20, 2014).

<sup>24</sup> *How Important is Your Lawyer's Trial Experience in a Personal Injury Case?*, PERSONAL INJURY LAWYERS BLOG, <http://accident-injury-lawyers.ca/2010/11/17/how-important-is-your-lawyers-trial-experience-in-a-personal-injury-case/> (last visited Mar. 20, 2014).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

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### III. EVALUATING A LAW FIRM

#### A. Facilities and Resources

As mentioned up above, not all law firms are the same. For the most part there are solo practitioners, small law firms, mid-sized law firms, and large law firms. All have various benefits to each and you should consider what size law firm is suited to fulfill your needs.

##### 1. Solo Practitioners

“Solo practitioners” typically handle general legal matters on a variety of topics – ranging from personal injury law to family law, but may also specialize in one particular area of law. There are many benefits to retaining a solo practitioner, especially if you have a single legal issue to resolve or if you are looking for ways to reduce costs.<sup>27</sup> Generally, solo practitioners are less expensive because they don’t have overhead costs, they will simply hire outside staff as needed. They can also provide more one on one personal attention since the attorney will be working on your case single handedly.<sup>28</sup>

On the other hand, solo law firms may lack extensive experience or resources – especially, if the attorney is a recent law graduate who decided to “hang up their shingle” or has limited access to fee based legal resources and data.<sup>29</sup> Solo practitioners may also often engage in referral arrangements with attorneys outside of his or her own firm when dealing with cases outside his or her area of legal practice.

Also be aware of lawyers that advertise heavily to attract a large number of clients but subsequently refer all or a portion of the potential matters to other firms as a source of revenue.<sup>30</sup> Before you retain the attorney, you should ask who will be working on your case so that there are no surprises later on.

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<sup>27</sup> *Types of Law Firms*, FINDLAW, <http://hirealawyer.findlaw.com/choosing-the-right-lawyer/types-of-law-firms.html> (last visited Mar. 20, 2014).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Downey, *supra* note 1, at 12.

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## 2. Small Law Firms

Small law firms, also referred to as “boutique” law firms, generally employ from two to ten attorneys, often allowing the lawyers an opportunity to collaborate with other lawyers on complicated or related matters.<sup>31</sup>

Due to the smaller number of lawyers these firms, often they have the “feel” of solo law firms – such as having close one-on-one attention – but may also allow for representation on a broader range of legal topics.

## 3. Mid-sized Law Firms

Mid-sized law firms usually employ between ten and fifty lawyers.<sup>32</sup> A benefit of working with a mid-sized firm is that they tend to have the warm characteristics of a smaller firm, and at the same time some of the legal resources of a large firm.<sup>33</sup> They may also have access to additional resources within the firm which means that many, if not all of your needs can be addressed from one office.<sup>34</sup> The down side is that you may not get much one on one with your attorney, and if you do, you are most likely going to be paying quite a bit for any face-to-face, telephone, or e-mail chats.

## 4. Large Law Firms

Large law firms, sometimes referred to as “full service” firms, can range in size from several dozens of lawyers and employees, to several thousands of employees. Generally, however, they consist of fifty or more lawyers.<sup>35</sup> With the number of lawyers in the office, large firms tend to handle large, complex legal problems. Most large firms will have the legal resources to handles issues for large public companies, governments, and other larger organizations.

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<sup>31</sup> *How to Hire an Attorney*, FINDLAW, <http://www.legalconnection.com/hire/htm> (last visited Mar. 20, 2014).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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Due to the size and nature of the cases handled by large firms, as well as the high level of expertise provided, these firms tend to come with considerable reputation and name recognition within the legal community.<sup>36</sup> However, they will also come with a higher hourly rate.

#### IV. ATTORNEYS FEES AND COSTS

Once you feel that you have found an attorney and or law firm that suits your needs, be sure to discuss fees and costs before you commit. It is important to understand how you will be charged so that there are no surprises.

##### 1. Contingency Fee

A contingency fee is an arrangement where the attorney gets a percentage of the settlement or judgment if you win the case. If you lose the case, the lawyer does not get a fee. However, even if you don't pay the lawyer a fee, you will likely be responsible for additional expenses he or she incurred when representing you, such as court costs or document preparation and copying costs.<sup>37</sup> Any contingency fee arrangement must be in writing and, among other things, include the agreed-upon percentage.<sup>38</sup> The fee agreement should list the services that the lawyer will perform and how the costs (other expenses of your case) will be handled and billed.

This kind of fee is often used in accident or personal injury cases in which someone is being sued for money. It means that you will pay the lawyer a certain percentage of the money you receive if you win the case or settle the matter out of court.

If your engagement is a contingency fee you will want to know: (1) the likelihood of recovery, although there are no guarantees; (2) an estimate of the recovery, although once again there will be no guarantee; (3) the percentage being charged; (4) the percentage most lawyers charge for the same type of

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<sup>36</sup> *Id.*

<sup>37</sup> *How Can I Find and Hire the Right Lawyer*, CAL. BAR ASSOC., <http://www.calbar.ca.gov/Public/Pamphlets/HiringLawyer.aspx> (last visited Mar. 20, 2014).

<sup>38</sup> *Id.*

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case; (5) the anticipated expenses; and (6) what happens if the case settles immediately.<sup>39</sup>

## 2. Non-contingency Fee

There are different types of non-contingency fees. Be sure to understand exactly what kind of non-contingency fee you are agreeing to.

A fixed fee, also called a standard or flat fee, is commonly used in routine legal matters. For example, a lawyer may charge all clients the same amount to draw up a will or handle an uncontested divorce.<sup>40</sup> Find out if there are any other charges that are not included in the fixed fee.

An hourly fee is when lawyers charge by the hour and the amount per hour can vary from lawyer to lawyer. If the engagement is on an hourly fee basis, you will want to know: (1) the hourly rate; (2) the minimum billing increments; (3) whether there is a charge for every phone call, letter and e-mail; (4) an estimate of the number of hours the case will take (this may not be a concrete answer); (5) what expenses might be required; and (6) what happens if the case takes longer than anticipated.<sup>41</sup> Hourly billing rates will be highly influenced on the location of the law office/law firm. In a major urban setting the cost could be double or triple that of a lawyer in a rural area.

A retainer fee is used to retain a lawyer to be sure they will be available to take your case.<sup>42</sup> In addition, the client will be billed per hour for the work that is done. Find out if retainer is non-refundable. If so, it is possible that you may not get your money back even if the lawyer does not end up handling your case.

A retainer fee can also mean that a lawyer is “on call” to handle certain problems over a period of time or that it is considered a down payment on legal service that the client will need.<sup>43</sup> Legal fees would then be subtracted from the retainer until the retainer is used up.

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<sup>39</sup> Robert Bovarnick, *How to Hire a Lawyer*, [http://www.forbes.com/2008/10/08/hiring-legal-help-ent-law-cx\\_rb\\_1008bovarnickhire.html](http://www.forbes.com/2008/10/08/hiring-legal-help-ent-law-cx_rb_1008bovarnickhire.html) (last visited Mar. 20, 2014).

<sup>40</sup> CAL. BAR ASSOC., *supra* note 37.

<sup>41</sup> Bovarnick, *supra* note 39.

<sup>42</sup> CAL. BAR ASSOC., *supra* note 37.

<sup>43</sup> *Id.*

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Ask the lawyer if he or she can provide you with an estimate of the total charges. Sometimes it is impossible for a lawyer to know exactly how much time your case will take, the lawyer can try to estimate the time and relevant costs. Overall, try not to focus on the lowest rate or costs, but the best *value* when all factors are considered.

## CONCLUSION

In many situations you are not only hiring a lawyer, but you are also building a relationship with and entrusting your lawyer to help resolve a difficult problem in your life. Although it may seem like a lot of research and factors to take into consideration, you will be happy that you took the time to find the right lawyer for your case and one that you will be satisfied working with.

### For Further Assistance:

For links to free information on firearms laws, the Legal Resources section of our [www.calgunlaws.com](http://www.calgunlaws.com) website has subsections on various firearms law topics. Check it out!

To stay updated on firearm law issues please subscribe to our firearms law newsletters, Facebook pages, and Twitter feed. [CalGunLaws.com](http://CalGunLaws.com), CalGunLaws.com's e-Bulletins, the [Self-Defense Defense, Right to Keep and Bear Arms](#), [MichellLawyers](#), and [Shooting Range Lawyers](#) informational Facebook pages, and the [@MichellLawyers](#) Twitter feed are produced as a *pro bono* public service by [Michel & Associates, P.C.](#).

Michel & Associates, P.C. has the largest and most experienced firearms law practice in California, but it is also a full service law firm. We appreciate *all* of your legal business inquires and client referrals for all types of legal work. This business helps support the many *pro bono* public services Michel

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Request a free case evaluation <http://michellawyers.com/free-case-evaluation/>. If you have questions or concerns regarding your legal obligations, we offer a free consultation. Contact us at [gunlawquestions@michellawyers.com](mailto:gunlawquestions@michellawyers.com).

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