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ACCOMMODATIONS**

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About the Authors



Phyllis W. Cheng is on the neutral panels of ADR Services, Inc., U.S. District Court, Central District of California, and California Court of Appeal, Second Appellate District. Ms. Cheng has resolved disputes as a neutral on matters related to: employment; wage and hour; class actions; civil rights; governmental entities; public accommodations; disability access; housing; and attorneys' fees.

Ms. Cheng was Partner at global firm DLA Piper, Of Counsel at employment firm Littler Mendelson, and Associate at civil rights firm Hadsell & Stormer.

Ms. Cheng served in the administrations of California Governors George Deukmejian, Pete Wilson, Arnold Schwarzenegger, and Jerry Brown. For nearly seven years, Ms. Cheng was Director of the California Department of Fair Employment and Housing (DFEH), the largest state civil rights agency in the United States. Among other things, Ms. Cheng oversaw six and seven-figure settlements and established a Dispute Resolution Division. She was also a Senior Appellate Court Attorney, Deputy Attorney General, and member of the state's Fair Employment and Housing Commission, Comparable Worth Task Force, and Commission on the Status of Women.

In addition to co-editing the California Fair Housing and Public Accommodations (The Rutter Group Civil Litigation Series), Ms. Cheng is author of the California Lawyers Association's Labor & Employment Case Law Alert, columnist of the California Labor & Employment Law Review, and contributor to various publications, including California Real Property Law Journal, Daily Journal, Bender's Labor & Employment Bulletin, The Corporate Counselor, Law.com and Cal Bar Journal. The State Bar named her the 2012 Ronald M. George Public Lawyer of the Year. Inside Counsel Magazine featured her on its May 2014 cover.

Ms. Cheng received her B.A. and M.Ed. from UCLA, J.D. from Southwestern University School of Law, and Ph.D. from USC, where she was a James Irvine Fellow.



Ann M. Noel, Esq. is the founder of Noel Workplace Consulting, specializing in legal advice and training on California and federal employment law compliance, especially sexual harassment prevention, disability and leave laws. Through the end of 2012, Ms. Noel was the California Fair Employment and Housing Commission's Executive and Legal Affairs Secretary, serving as its General Counsel, crafting California's regulations on mandatory sexual harassment training, disability and pregnancy discrimination, and its chief administrative law judge, adjudicating employment, housing and public accommodation cases.

Ms. Noel is the Co-Director of the Berkeley Center on Comparative Equality and Anti-Discrimination Law's Sexual Harassment/Violence Working Group, organizing international conferences on the topic, and working with international partners to develop suggested model laws and practices regarding harassment. She is a Co-editor of the Berkeley Center's book, *The Globalization of the #MeToo Movement*, published in 2020 (www.globalmetooobook.com), which describes the #MeToo movement worldwide, and suggests techniques to combat harassment.

Ms. Noel has written extensively about employment and housing discrimination law, writing and editing practice guides on fair employment, fair housing, the Violence Against Women Act, and hate crimes.

Ms. Noel has taught employment discrimination law at New College School of Law in San Francisco. She is a graduate of the University of California at Berkeley and the University of California at Davis School of Law.



Susan Saylor is now retired after practicing law for 29 years. She spends her time gardening, reading, swimming, and updating this practice guide. Her law career included, in reverse order, time spent with the California Attorney General's Office (Consumer Protection), the California Department of Fair Employment and Housing, and Legal Aid groups in Oakland and Los Angeles.

She co-chaired the State Bar's Fair Housing and Public Accommodations Subsection and served on the Real Property Law Section's Executive Committee from 2010-2013.

Susan received her J.D. from the University of San Francisco School of Law, Magna Cum Laude, and her B.A. in Political Science from the University of Michigan.

Acknowledgments

I. FAIR HOUSING

1. Prohibited Acts (Susan Saylor; Unruh sections originally written by Caroline Hunt)

Caroline L. Hunt is a Regional Specialist Administrative Law Judge II with the California Department of Social Services. Previously she was an Administrative Law Judge for the Fair Employment and Housing Commission. She has taught Advanced Legal Writing at Monterey College of Law and Paralegal Studies at UCSF Santa Cruz Extension. She also authored the chapter, “The History of Monterey’s Federal District Court, 1851– 1866” in *A Judicial Odyssey: Federal Court in Santa Clara, San Benito, Santa Cruz, and Monterey Counties*, Advisory Committee San Jose Federal Court, San Jose 1985.

2. Discrimination in Land Use and Zoning (Michael Rawson)

Michael Rawson is the director of the Public Interest Law Project (PILP) a nonprofit state support center for California legal services and other public interest law programs. Mr. Rawson co-founded PILP in 1996 after a career as managing and senior housing attorney for the Legal Aid Society of Alameda County. He also directs PILP’s California Affordable Housing Law Project.

Michael focuses on affordable housing, land use, fair housing, and anti-displacement strategies. He has litigated many housing related cases with legal services programs, including suits addressing the adequacy of local housing elements, displacement of lower income households, community acceptance of affordable housing, the constitutionality of inclusionary zoning and discrimination against persons protected by the fair housing laws. He also advocates before local, state, and federal bodies on housing law reform and has authored many publications and training materials on affordable housing law and policy.

3. Protected Classes (J. Kathleen Belville)

Kathy Belville was a licensed Real Estate agent prior to receiving her Juris Doctorate degree. She entered the practice of law as a generalist in real estate matters, becoming a specialist in the representation of landlords in 1989. Now retired, Ms. Belville was the managing partner of the Fair Housing Training and Defense department of the Law Offices of Kimball, Tirey & St. John, LLP a California-wide real estate law firm, and was a frequent lecturer and CLE provider on management-side fair housing issues.

4. Proper Defendants or, Who May be Liable? (Liza Cristol-

Deman & Elizabeth Brancart)

Elizabeth Brancart is a partner in Brancart & Brancart, a law firm located in Pescadero, California, specializing in federal fair housing litigation. She graduated from the University of California, Boalt Hall School of Law in 1985, then clerked for the Honorable Vincent L. McKusick, the Chief Justice of the Maine Supreme Judicial Court. Since 1994, Ms. Brancart has represented plaintiffs in federal fair housing litigation, focusing on appellate work and motion work before the district courts, including motions for summary judgment, motions for attorney's fees, and discovery motions. She has represented plaintiffs in Fair Housing Act cases in the Supreme Court of the United States, the Ninth Circuit Court of Appeals, and federal district courts. Some of her notable fair housing cases are *Meyer v. Holley* (2003) 537 U.S. 280, *Avenue 6E Investments, LLC v. City of Yuma* (9th Cir. 2016) 818 F.3d 493, *Pacific Shores Properties, LLC v. City of Newport Beach* (9th Cir. 2013), and *Giebeler v. M&B Associates* (9th Cir. 2003) 343 F.3d 1143

Liza Cristol-Deman is a partner at Brancart & Brancart, a Bay Area law firm that represents plaintiffs in housing discrimination cases in federal and state courts throughout the United States. She joined the firm in 1997 after graduating from Stanford Law School, where she honed her skills as a clinical student at the East Palo Alto Community Law Project and managing editor of the Stanford Law and Policy Review.

In 1998, she won a verdict for the plaintiffs in the first-ever California trial involving housing discrimination based on sexual orientation, under the leadership of her colleague Chris Brancart and attorneys from the California Department of Fair Employment and Housing. Since then, she has successfully handled hundreds of fair housing cases in federal and state courts throughout California, including cases involving housing discrimination based on race, national origin, familial status, disability, source of income, and sexual harassment of tenants and rental applicants. She enjoys training advocates, attorneys, and community members about fair housing laws and litigation practices.

5. Proof (Karen Kubala McCay)

Karen K. McCay is the Managing Partner and President of the law firm, Pahl & McCay, splitting her time between the San Jose and Los Angeles offices of the firm. She represents both non-profit and for-profit real estate owners, property managers, and developers with special concentration on the multi-family housing industry. For her multi-family clients, Ms. McCay provides advice in all areas of their operations, including fair housing and compliance issues. She also has an extensive litigation practice representing landlords and other businesses in both court actions and administrative proceedings.

Ms. McCay graduated with honors from the University of Florida in 1991 where she majored in Finance. In 1995, she received

her Juris Doctor, magna cum laude, from The American University Washington College of Law, where she served as Articles Editor for The American University Law Review. She is admitted to practice law in California and Florida. Ms. McCay is a frequent lecturer on fair housing issues through the State of California for organizations such as the California Apartment Association, AHMA-NCNH, LeadingAge California, the Corporation for Supportive Housing and many others. Ms. McCay also has supported the community through her service on boards of directors for many organizations over the past several years including the Housing Industry Foundation, the San Jose Silicon Valley Chamber of Commerce, AHMA-NCNH and Church of the Valley Retirement Homes, Inc.

6. Defenses (Susan Saylor)

7. Procedural Considerations (Susan Saylor; portions originally drafted by Sybil Villanueva)

8. [Fair Housing] Remedies (Sybil Villanueva)

R. Sybil Villanueva was a Senior Staff Counsel at the for the Department of Fair Employment and Housing from 2005 through 2013, where she litigated employment, housing, and public accommodation discrimination cases in federal and state court. She currently serves as a Legal and Business Advisor for It's Not Much But It's Ours, Inc. She is a graduate of UCLA Law School, and received her undergraduate degree from UC San Diego.

Ms. Villanueva co-wrote an article for the California Real Property Journal entitled, "Anatomy of a Fair Housing Case: A Primer on Litigating a Housing Discrimination Claim" (2009). She is also a contributing editor to the 2001, 2002, and 2003 Cumulative Supplements to "The Developing Labor Law." She served as co-chair of the Fair Housing and Public Accommodations Subsection of the Real Property Section of the State Bar of California from 2011-2013.

9. Attorney's Fees in Fair Housing and Public Accommodation Cases (Richard Rothschild)

Richard A. Rothschild, the Director of Litigation at the Western Center on Law and Poverty, has negotiated and litigated claims for attorney's fees on behalf of the Western Center, other legal services programs, and private attorneys for more than 40 years. He has been appointed by a federal district judge to serve as a Special Master on fee issues and has both written and lectured extensively on the subject to numerous legal services and bar association groups. Before coming to the Western Center, Mr. Rothschild served as an annual law clerk to California Supreme Court Justice Stanley M. Mosk.

II. PUBLIC ACCOMMODATIONS

10. Unruh Civil Rights Act: Prohibited Acts, Protected Classes, and Proper Defendants (Ann M. Noel and Susan Saylor)

11. Disability-based Discrimination (Autumn Elliott and Dara Schur)

Autumn M. Elliott is an Associate Managing Attorney at the Los Angeles regional office of Disability Rights California, California's protection and advocacy system. She practices in the areas of discrimination and mental health law. She previously worked as an attorney at Disability Rights Legal Center and in the Housing and Public Benefits units at the Los Angeles Center for Law and Justice. She was a Skadden Fellow at Bread for the City, a holistic services center in the District of Columbia, where she helped low-income clients with disabilities obtain equal access to housing. She served as a law clerk to Judge Warren J. Ferguson of the U.S. Court of Appeals for the Ninth Circuit and to Deputy Chief Justice Dikgang E. Moseneke of the South Africa Constitutional Court. At the Centre for Applied Legal Studies in Johannesburg, Autumn worked on impact litigation and public policy advocacy regarding the transformation of South African society. Autumn is a graduate of Harvard Law School and Harvard College and has an LL.M. degree from the University of the Witwatersrand.

Dara Schur is a Senior Counsel at Disability Rights California, a nonprofit law firm dedicated to advancing the rights of people with disabilities and one of the largest disability rights firms in the country. She currently leads an accessible affordable housing litigation and policy campaign. She previously worked on litigation, training, and advocacy with the legal staff at Disability Rights California's five regional offices in Sacramento, Oakland, Fresno, Los Angeles, and San Diego. She specializes in civil rights, housing, land use, and disability law. During her almost 40 years of work on housing issues, Dara has been lead or co-counsel on a number of class action and impact lawsuits which have resulted in the addition of thousands of accessible and affordable housing units throughout California. She has also been lead or co-counsel on a range of fair housing, redevelopment, land use, and community integration suits for people with disabilities. Dara is a member of the California Fair Employment and Housing Council, a state entity that promulgates regulations related to employment, fair housing, public entity and public accommodation discrimination, and hate violence. It also holds hearings on civil rights issues confronting the state. Dara was appointed as a member of the Council by California Governor Edmund G. Brown, Jr., in 2015, confirmed by the California Senate on February 4, 2016, and reappointed in 2017. Dara received her J.D. in 1979 from Berkeley Law (formerly Boalt Hall School of Law), University of California at Berkeley. Before coming to Disability Rights California she was a housing law specialist for the Western Center on Law and Poverty, taught housing law at Berkeley Law, and worked for a number of legal services agencies and a civil rights firm. Dara currently sits on the Board of Directors of The Impact Fund and regularly trains advocates and attorneys on public interest issues and litigation skills, including class actions.

12. The Americans with Disabilities Act (ADA) and its

Incorporation into California Law (Theresa L. Kitay)

For nearly 30 years, Theresa L. Kitay has provided general consultation and defense representation on civil rights issues in the real estate industry. Terry has developed an expertise in disability and accessibility issues for real estate, including reasonable accommodations and design and construction requirements. She represents owners, developers, managers, architects, and engineers throughout the country. She is a frequent contributor on these issues to national publications, and has testified before the United States House of Representatives on accessibility issues. She is an honors graduate of both Smith College and the Emory University School of Law. She practiced law in Atlanta and Los Angeles before relocating to North Carolina in 2016. She is a member of the California, Georgia, and now North Carolina state bars, and has declared she will not be sitting for any other state's bar exam.

13. Other Public Accommodation Statutes (Ann M. Noel)

14. Civil Statutes Protecting Against Hate Violence (Ann M. Noel)

15. Proof (Ann M. Noel)

16. Defenses (Phyllis W. Cheng)

17. Procedural Considerations (Susan Saylor)

18. Remedies (David Raizman)

David Raizman is nationally known for his disability rights practice, specifically for his work under Title III of the Americans with Disabilities Act. In 2012, he was recognized by the *Los Angeles Daily Journal* as one of the top labor and employment attorneys in California and has been recognized multiple times as a Southern California *Super Lawyer*.

David works extensively with hotels, sports franchises, stadium and arena owners and operators, amusement parks, theaters, retailers, municipalities and many other clients with operations open to the public to help secure their compliance with disability access laws and to defend the class action and other litigation that is frequently brought against them. In addition to his disability rights experience, David has a thriving practice focused on defending employers on the full range of employment claims, including discrimination and harassment, wage and hour, family and medical leave laws, and trade secret and non-compete issues.

Outside of his litigation practice, David counsels clients regarding disciplinary decisions, development of best practices, workforce reductions, legal compliance, and employment-related transactions. He also regularly advises national clients on how to formulate restrictive covenants that California courts and other jurisdictions will enforce.

A frequent writer and lecturer on labor and employment topics including disability rights, trade secrets, and non-compete agreements, David acted as a contributing editor for the California chapters of several BNA publications. He has also written articles for a variety of publications including the *Daily Journal*, *California Real Property Journal*, *Lodging Hospitality* and *SHRM Online*, and has served as a speaker for the Association of Corporate Counsel. David earned his J.D. from Columbia Law School, where he was on the board of editors of the *Columbia Human Rights Law Review*, and his M.S.J. from Columbia University Graduate School of Journalism. He earned an A.B. in economics from Vassar College.

Preface, 2023 Edition

Another year passes without relief from the housing crisis that besets California. For practitioners on both sides of the aisle struggling to make housing available and accessible, we offer this book as a comprehensive resource on the law of discrimination in housing and places of public accommodation, particularly as it is practiced within this State. No other practice guide compares with our scope and emphasis on California law. May it serve you well.

Susan Saylor

Editor-in-Chief

Foreword

Since California's Rumford Fair Housing Act was enacted in 1963 and later recodified as the Fair Employment and Housing Act (FEHA) in 1980, fair housing advocates, government prosecutors, and a handful of private attorneys have developed a system that works. Typically, a case starts with the victim complaining to a fair housing non-profit organization, which conducts the initial investigation and testing on the alleged violation. Should the fair housing group not pursue the case as a party, it can refer the allegations of discrimination to the Department of Fair Employment and Housing (DFEH or Department) for further investigation, enforcement, conciliation, mediation, and prosecution. If the Department finds cause and prosecutes, the fair housing group can participate as a real party and/or intervener in the DFEH's action against the offending landlord, realtor, lender, or agent. When the DFEH settles or prevails, the complainant can be awarded damages and affirmative relief.

Under this scheme, the Department has garnered significant fair housing victories over the years in administrative and civil actions on every area of discrimination under the FEHA. However satisfactory these individual fair housing settlements and unchallenged lower court proceedings may be, most have no precedential value, cannot be cited, and leave no progeny. Indeed citable housing case law under the FEHA has been few and far between.

Until 2008, there had been no fair housing presence at any California bar association. As a result of having so few private attorneys in the fair housing practice, landlords, realtors, lenders, and other potential respondents can unknowingly violate the FEHA without proper advice of counsel. Without a good body of decisions for guidance, these mistakes tend to be repeated and can be costly. The ultimate effect of this scenario is the deprivation of civil rights for tenants, protracted litigation for all parties, expensive settlements or judgments, and delayed relief.

To rectify the missing link between a practicing bar and fair housing, a new Fair Housing and Public Accommodations Subsection was launched under the State Bar of California's Real Property Law Section in 2008. Its purpose is to advance the FEHA and Unruh Civil Rights Act in housing and public accommodations through education and training. Comprised of a balanced group of attorneys, representing plaintiffs and landlords, and neutrals—many who are writers of this deskbook—the Subsection has supported the growth of attorneys litigating such cases. This group has provided a forum for training and developing fair housing and public accommodations law under the FEHA, supported a collegial network for sharing resources, fostered better client representa-

tion, sharpened lawyering skills, allowed adversaries to work together for the betterment of the practice, and created opportunities to advance and refine the law.

I extend my appreciation to editor Susan Saylor, co-editor Ann Noel, the authors of the various chapters, reviewers Sami Hasan and Mallory Sepler-King, and The Rutter Group for this new and essential book. This important publication is timely in light of the maturation of the FEHA, the Department's recent authority to order mandatory dispute resolution and to file civil actions, and the plan of the DFEH Fair Employment and Housing Council to promulgate the inaugural FEHA Housing Regulations. Hopefully the fair housing and public accommodations practice will grow to be robust under the guidance of this inaugural reference.

Phyllis W. Cheng



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