

# FROM THE CHAIR

by Michael R. Diliberto

California's court system serves a population of more than 39 million people—about 12 percent of the total U.S. population—and processed over 4.5 million cases in fiscal year 2022-2023. The judicial branch budget for the 2022-2023 fiscal year of \$5.2 billion (excluding infrastructure) represents about 1.7 percent of the California state budget. The vast majority of cases in the California courts begin in the superior (or trial) courts.<sup>1</sup>

What motivates so many clients to file these cases? Most cases settle before trial, encouraged with the widespread use of alternative dispute resolution. What constitutes a successful resolution in the client's mind? Paragraph (a) in Rule 1.2 of the California Rules of Professional Conduct provides in part that "a lawyer shall abide by a client's decisions concerning the objectives of representation and... shall reasonably consult with the client as to the means by which they are to be pursued." This paragraph (a) also "confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations."<sup>2</sup>

Most conflicts are resolved with a monetary settlement, but, in many cases, disputes involve more than just money. What are the underlying reasons that drive conflict? Interests (desires and concerns that motivate people) are not always expressed in a negotiation. Instead, people talk about positions (something they have decided upon, such as how to divide the value in dispute). Our interests are what cause us to decide on our positions.

Underlying interests are not always obvious, as shown by the factors that caused the rock band The Police to go their separate ways at the height of their success. The Police sold over 75 million records, making them one of the best-selling bands of all time. They released five

albums, but, according to drummer Stewart Copeland, it was over after the third album, when the band tension first appeared. Why? Decades later (after "band therapy") they learned what the problem was: "That we make music for different reasons. Music has a different function in our lives. We go about thinking about music in different ways. We make it by different means."<sup>3</sup>

Similarly, clients have varied ideas of what is valuable to them. One example is the value of time over money. One in four people (26 percent) are willing to take a 15 percent pay cut to gain more free time. Time is considered a valuable luxury. Six in 10 people (63 percent) "feel wealthy" if they have enough time to spend with family and friends. Nearly a third feel comfortable taking on debt if it buys more free time (29 percent) or a memorable experience (29 percent). Nearly two in five say saving time is more important than saving money (37 percent).<sup>4</sup>

Go below the line and discover the interests that motivate the conflict. Finding them can provide additional resources to achieve settlement. ■

<sup>1</sup> Judicial Council of California, 2024 Court Statistics Report, Statewide Caseload Trends, 2013-14 Through 2022-23, 3, available at <https://www.courts.ca.gov/documents/2024-Court-Statistics-Report.pdf>.

<sup>2</sup> CAL. R. OF PROF'L CONDUCT R. 1.2, cmt. [1].

<sup>3</sup> Stewart Copeland Interview, available at <https://www.youtube.com/watch?v=XIJKRhdICTY>.

<sup>4</sup> Empower Advisory Group, LLC, Empower "Time is Money" study 2024, 3-4.

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