



LITIGATION, BUSINESS LAW, LABOR and EMPLOYMENT

# NEWSLETTER

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### Restrictions on Forum Shopping

The forum is the court where a civil case is brought by the plaintiff. Some forums or jurisdictions are thought to be more favorable to certain claims than other jurisdictions and tend to attract more lawsuits. Forum shopping is the practice by which plaintiffs deliberately choose the court in which they file their case that they believe will give them the result they desire. Their choice, however, may not be the correct jurisdiction to hear the case.

When faced with filing a lawsuit, there are multiple criteria to determine jurisdiction, including the court in the county in which the plaintiff resides, in which the defendant does business, or the county in which the injury took place. In some cases, they also have a choice between filing the action in state court or federal court. Forum shopping is a non-issue where there is proper jurisdiction. Defendants, however, can still challenge the venue on multiple grounds to get the case moved to a different state, county, or court. In particular, defendants who transact business across the country often discover that they are being sued in inconvenient or improper jurisdictions.

### Forum Non Convenience

Courts have a number of different ways they can reduce forum shopping, including the rule of forum non conveniens, which allows courts to send the case to a different court that has a stronger claim of jurisdiction. The court reviews the case and the parties and can then decide whether jurisdiction is reasonable, whether another court would be a better venue, or whether it would be fair to require the parties to litigate in that jurisdiction. A challenge based on forum non conveniens allows a judge to discourage forum shopping and move a case that is only tangentially connected to a certain jurisdiction to one in which it actually belongs.

When two private parties enter into a contract, there will often be a clause in the contract concerning venue, forum selection and what laws will be applied to any issue arising out of the contract. These clauses can require the parties to litigate in a specific state, county, and court or even bind the parties to dispute resolution through arbitration.

## Erie Doctrine

For plaintiffs considering filing in federal court, the Erie Doctrine guides federal judges to apply state substantive law so long as there is no federal law that would preempt the state law. This is designed to prevent plaintiffs from choosing federal court to avoid a less advantageous state law. Plaintiffs occasionally select federal court where appropriate to avoid long state court calendar delays and judges who may not be familiar with particular technical laws.

### *Bristol Myers Squibb Co. v. Superior Court of California*

In June, the U.S. Supreme Court handed down a decision that clearly limited the ability of out-of-state residents to forum shop in tort cases. In an 8-1 decision, the Court found that a company's continuous activity in a state does not alone create jurisdiction. Instead, there must be a clear link between the chosen forum and a specific lawsuit before the court can find that it has jurisdiction over a nonresident. Litigants previously drawn to plaintiff-friendly California will now be required to show a stronger connection to the jurisdiction by virtue of the primary residence of a party or the place where the injury occurred. In this case, a plaintiffs' attorney brought hundreds of cases in California concerning the drug Plavix. Most of the individual plaintiffs did not reside in California, did not take the drug in California, and had no other connection to the state. Indeed, the only connection to the state was that the drug was sold there as it is sold in other states. The Supreme Court rejected the notion that there was any sort of "case-linked" jurisdiction over these plaintiffs. The Court found that the activity in the state unrelated to the lawsuit at hand does not create jurisdiction. Plaintiffs are given the option of litigating in their home states or, if they want to consolidate their lawsuit into a class action, they can pursue the lawsuit in a venue that has general jurisdiction over the defendant.

Businesses also are entitled to a venue where they can get a fair trial. Consulting with a business attorney will help business owners determine their options for moving forward. An experienced Southern California business attorney such those at Gray & Associates, P.C. can help you review the options and determine the best strategy to respond to litigation. Give her a call today at (310) 452-1211 or visit her online to set up a free consultation.

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Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment, discrimination, wrongful termination; commercial, contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

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## About Gray & Associates P.C.



Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues. Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent legal representation. Click [here](#) to read more.

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