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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,

## Lessons From Snapchat: What to Do When a Handshake Deal Goes Bad

There's a Hollywood saying from the legendary Louis B. Mayer: "A verbal agreement ain't worth the paper it's printed on." Mr. Mayer was not entirely correct, as a verbal agreement may be binding, and no matter how brief, may still be a contract. As a recent case demonstrates regarding the rightful ownership of an application known as Snapchat, the words of Mr. Mayer reinforce a bit of vintage wisdom that contracting parties should always put their agreements in writing.

In 2011, three Stanford undergraduates started developing an online application which, in a chat setting, allows one computer user to send visual media-like pictures to other computer users. After a short period of time the pictures become unavailable. Reggie Brown was basically the catalyst and the idea's originator, Robert Murphy handled the technical programming aspect, and Evan Spiegel pushed the project forward. It doesn't sound like much but today the value of this company is in the tens of billions of dollars.

Upon discussing the idea, the three young men decided to proceed with

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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## Accreditations

The logo for Super Lawyers, featuring the words "Super Lawyers" in a stylized, bold, serif font with a gold-to-brown gradient and a drop shadow effect, set against a white background.

From this point on, as the project moved forward in development, they failed to set forth and sufficiently detail, in writing, any of their agreements and resolutions regarding any essential terms of the project. Instead, emails and random scribbles were used to keep track of all business matters. The parties put stock in their friendship and trusted each other to do the right thing.

But people and situations change over time. Expectations on the first day of a project are not the same as those on the 90th day. As the creative process evolved, Spiegel and Murphy became disenchanted with Brown, changed passwords, and removed his access to all things related to the business, including the computer systems that housed the project. After failing to resolve the dispute, Mr. Brown sued for his share as a co-founder of Snapchat.

As Los Angeles (Silicon Beach) grows as a startup location for many types of technology businesses, the recent history of co-founder disagreements and lawsuits (e.g., Facebook) suggests these types of disputes are probably not going to vanish from the legal landscape. Most of these problems are a result of a failure to put terms and conditions in writing. Time and time again, we see the catastrophe caused by the failure to draft a document containing terms like those relating to creation, contribution and ownership: who played an essential role in a company's creation and how much money, credit and respect they deserve as a result. After the fact, one party thinks he or she isn't getting a fair share or one party thinks another party's contributions are inferior and deserving of less recognition. The latter is what happened in the case of Snapchat.

We now see a rather obvious problem with verbal contracts, and that is the evidence sufficient to prove a case. How does a court determine the terms regarding the nature and degree of Brown's ownership without a writing? The best proof of ownership, but perhaps not the most reliable, may

## Directions



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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.

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## Practice Areas

have to come to the deposition testimony of the parties, which depends upon the parties truthfully and correctly recollecting events and conversations that occurred in the past, and perhaps in the distant past. It is axiomatic that the disagreement will be profound.

Finley Peter Dunne said "trust everybody, but cut the cards." This witticism is why contract law is not just about trust, but memorializing expectations. Trust exists when all parties mutually understand the expectations of all parties. The existence of a written agreement containing clear terms and conditions facilitates performance and satisfaction far better than a handshake. Reducing an agreement to writing, even between friends, is more conducive to maintaining trust than an oral agreement, especially for complicated transactions like the formation of an entity based around a novel and innovative business idea. If friends genuinely trust each other, they should realize that a writing will more positively affect the future and longevity of the friendship than a "gentleperson's agreement."

It is essential that contracts designed for complex business transactions be in writing. No business transaction is ever too complex to be written down, and contract terms and conditions need to be clearly delineated regardless of the time it takes to do so. Save the oral contracts for simple things.

Even the best attorneys and business people can have trouble understanding the proper way to proceed with a particular business transaction without a writing describing its details, terms and conditions. Three oil companies found this out the hard way in the mid 1980's when a court upheld a handshake deal between Getty Oil and Pennzoil, created (according to Pennzoil) when an attorney from Pennzoil shook hands with the directors of Getty over a written agreement that was never signed by Getty. A jury found that Getty Oil and Pennzoil did have a valid contract, and further found that

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Texaco had interfered with this contract when Texaco tried to induce Getty Oil into a better deal than Pennzoil's offer. The jury awarded damages of 10.6 billion dollars for interference with the earlier agreement. *Texaco, Inc. v. Pennzoil, Co.*, first reported at 729 S.W.2d 768 (Texas App. 1987). At the time, this was the biggest civil damages verdict ever returned.

If you wish to form a contract, be sure that you have the evidence to prove that a contract exists. Witnesses can help establish the existence of a verbal contract, as can e-mails, letters, or even a scribble on a napkin. But certainly don't make agreements involving elaborate business plans using a handshake to consummate the deal. Put them in writing!

An attorney experienced in contract law can help document business formation and transactions. Avoid the pitfalls of oral contracts. If disputes later arise, [Gray & Associates](#) can help protect your rights and interests. For your free initial consultation with a knowledgeable business litigation attorney, call (310) 452-1211 or visit our website, [www.grayfirm.com](http://www.grayfirm.com).

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