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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	
Plaintiff,)	LAY OPINION OF LOVE, HATE,
)	JEALOUSY, ETC. IS
vs.)	ADMISSIBLE
)	
)	
Defendant.)	Date:
)	Time:
)	Dept:

ISSUE

May a lay witness testify as to a party exhibiting love, hate, jealousy, etc. towards a third person?

LAW

The evidence code provides for the admissibility of lay opinion.

Evidence Code Section 800:

"If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is:

- (a) Rationally based on the perception of the witness;
- and
- (b) Helpful to a clear understanding of his testimony."

In the case of **Holland vs. Zollner** (1894) 102 C 633, 638, 36 P 930, the court first established the use of lay opinion to describe various mental and moral aspects of humanity. These included temper, fear, anger and excitement.

"Love, hatred, sorrow, joy, and various other mental and moral operations, find outward expression, as clear to the observer as any fact coming to his observation, but he can only give expression to the fact by giving to him the ultimate fact, and which for want of a more accurate expression, we call opinion." **Holland vs. Zollner**,

supra, 638.

CONCLUSION

Lay witnesses who are familiar with the parties can testify as to love, hatred, jealousy, etc. as the best method to convey this type of information.

Dated:

Respectfully submitted,

Attorney for Defendant