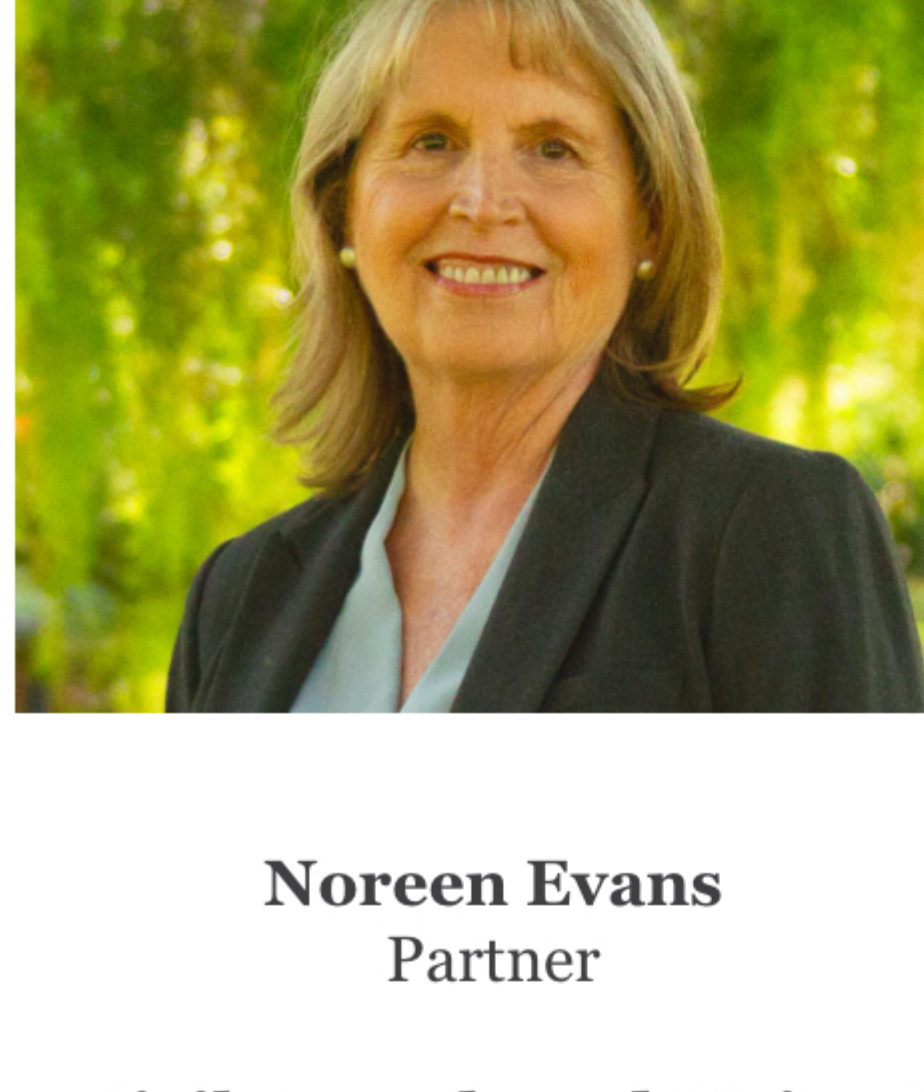




EVANS KINGSBURY LLP

IN PURSUIT OF JUSTICE



Noreen Evans
Partner



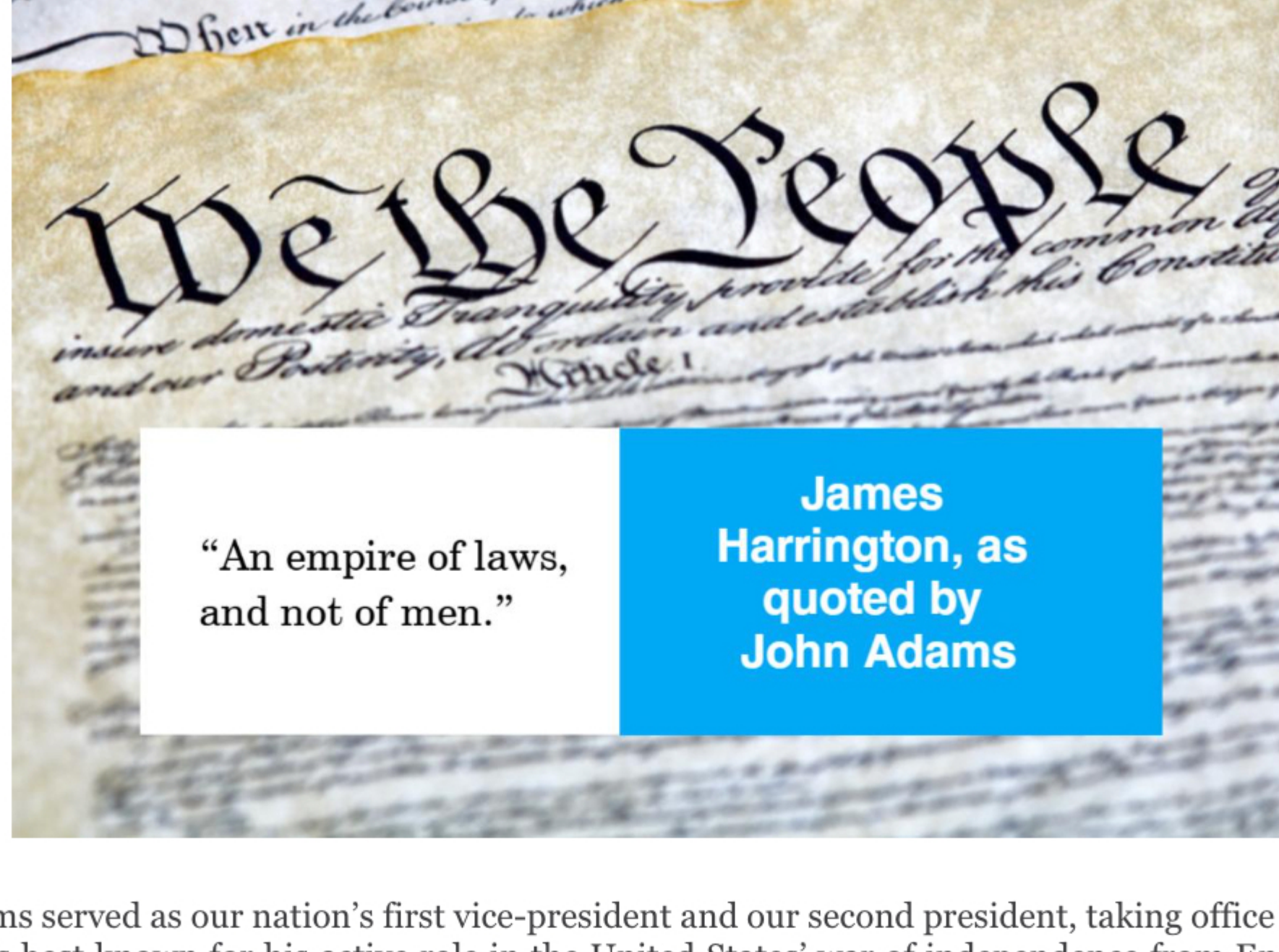
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Civil Appeals and Writs, Civil Litigation, and Family Law

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New Year's Resolution



John Adams served as our nation's first vice-president and our second president, taking office in 1797. He is best known for his active role in the United States' war of independence from England. John Adams believed fervently in the rule of law and the checks on power and balances of power enshrined in the U.S. Constitution.

But what does it mean to be a nation of laws and "not of men" and women?

The rule of law ensures that power is not concentrated in the hands of any one individual or group. It ensures that no one individual, such as an imperial president, may make and enforce the laws according to his or her whim.

Rather, the law in a democracy is crafted through debate and compromise between two houses of an independent legislature and the executive -- and interpreted and enforced by an independent judiciary. It ensures that the law applies equally to everyone and is not applied arbitrarily depending on the desires of a single individual.

Nearly 230 years after John Adams' presidency, the rule of law in our democracy is battered and threadbare. Economic disparity in the U.S. exceeds even that of the notorious Gilded Age. Billionaires are preparing to run our government, control our military, and cut the benefits for which each of us pays. And, sadly, the law does not apply equally to rich and poor alike.

In the coming year, we Americans must recommit ourselves to the rule of law and to the Constitution and to the principles for which it stands: liberty, equality, and justice for all. These principles do not apply only to the majority of Americans or only to people in favor. They apply to all, without exception, without regard to ancestry, nationality, color, religion, or gender.

In this law firm, we take seriously our oath of office. As lawyers, we will continue to uphold the Constitution and as officers of the court we will continue to conduct ourselves with dignity, courtesy, and integrity.

Long live the rule of law.

APPELLATE UPDATE DECEMBER 2024

Civil Procedure

When is an order an appealable judgment? Generally, appeals may be taken only from final judgments. In this case, the Superior Court entered an unsigned minute order granting a motion for nonsuit following trial. Opposing party appealed, but the Court of Appeal invited the parties to brief the issue of appealability of the unsigned minute order.

Appellant then submitted the minute order with the words "It is so ordered" added and signed by the trial judge.

The Court of Appeal held that the signed minute order was not a final judgment and therefore not appealable. The Court of Appeal urged the Superior Court to file signed orders clearly marked as "Judgment" to avoid future confusion.

Blauser v. Dubin
Case no. G063715 (Fourth Appellate District)
November 19, 2024



Arbitration

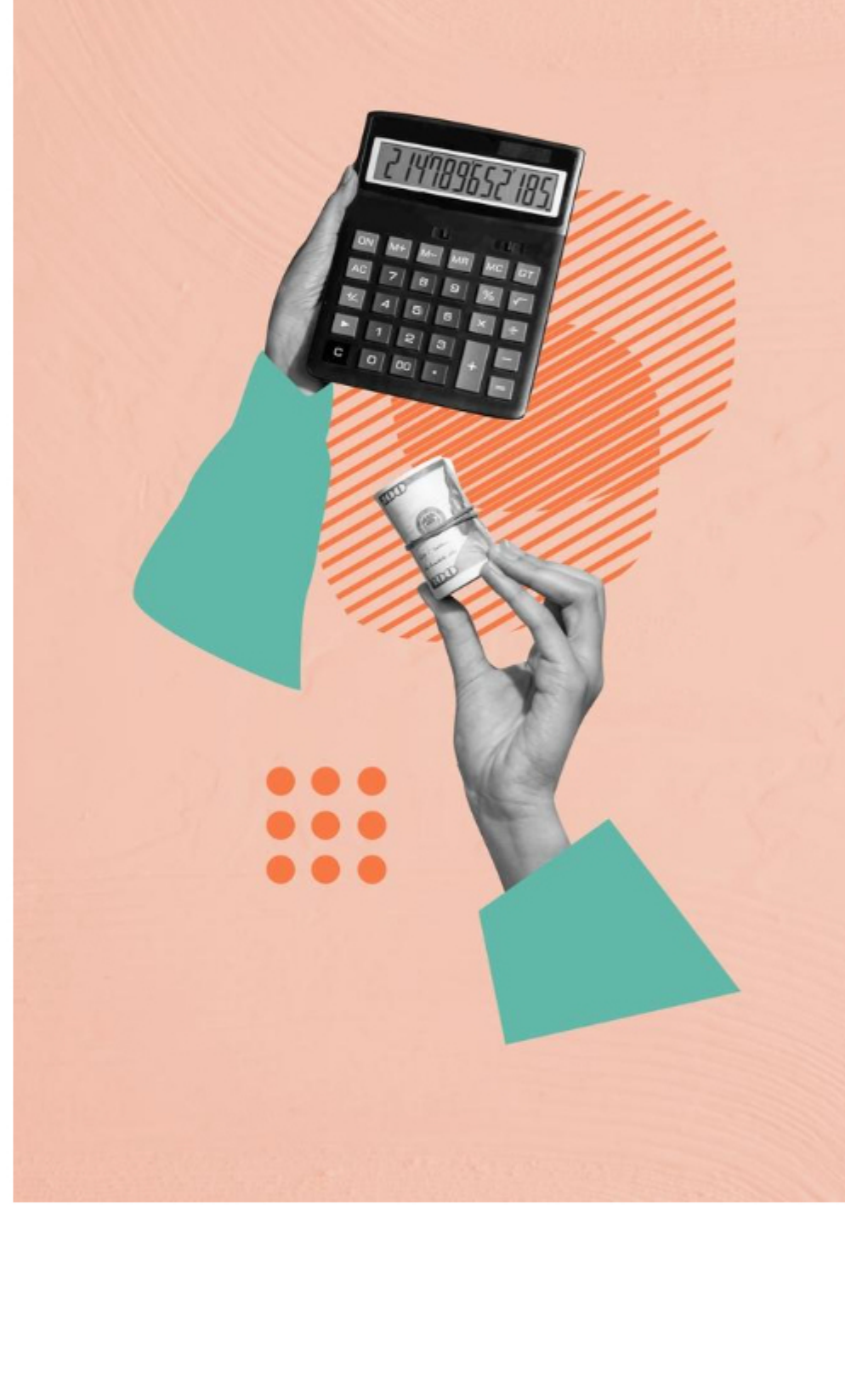
Where the parties have agreed pursuant to contract to submit their disputes to arbitration (also known as a pre-dispute agreement to arbitrate), Code of Civil Procedure section 1281.98 treats the drafting party's failure to timely pay arbitration fees a material breach of the parties' agreement, waiving the right to insist upon arbitration.

In this case, the parties did not enter into a pre-dispute agreement to arbitrate but stipulated to arbitration after the lawsuit was filed. Their stipulation provided that defendant JMM would pay the arbitrator's fees.

Arbitration commenced and JMM timely paid three of the arbitrator's invoices. Before finalizing the decision in the case, the arbitrator sent a fourth invoice. When JMM failed to pay, the arbitrator emailed the parties stating that the decision had been written and would be released upon payment of the fees. JMM responded by immediately paying the arbitrator's fee.

Plaintiff then notified the arbitrator and JMM that she elected to withdraw from arbitration pursuant to section 1281.98. The Court of Appeal held that section 1281.98 does not apply to cases in which the parties stipulated to arbitration following the filing of the lawsuit.

Trujillo v. J-M Manufacturing Co., Inc.
Case no. B327111 (Second District)
December 2, 2024

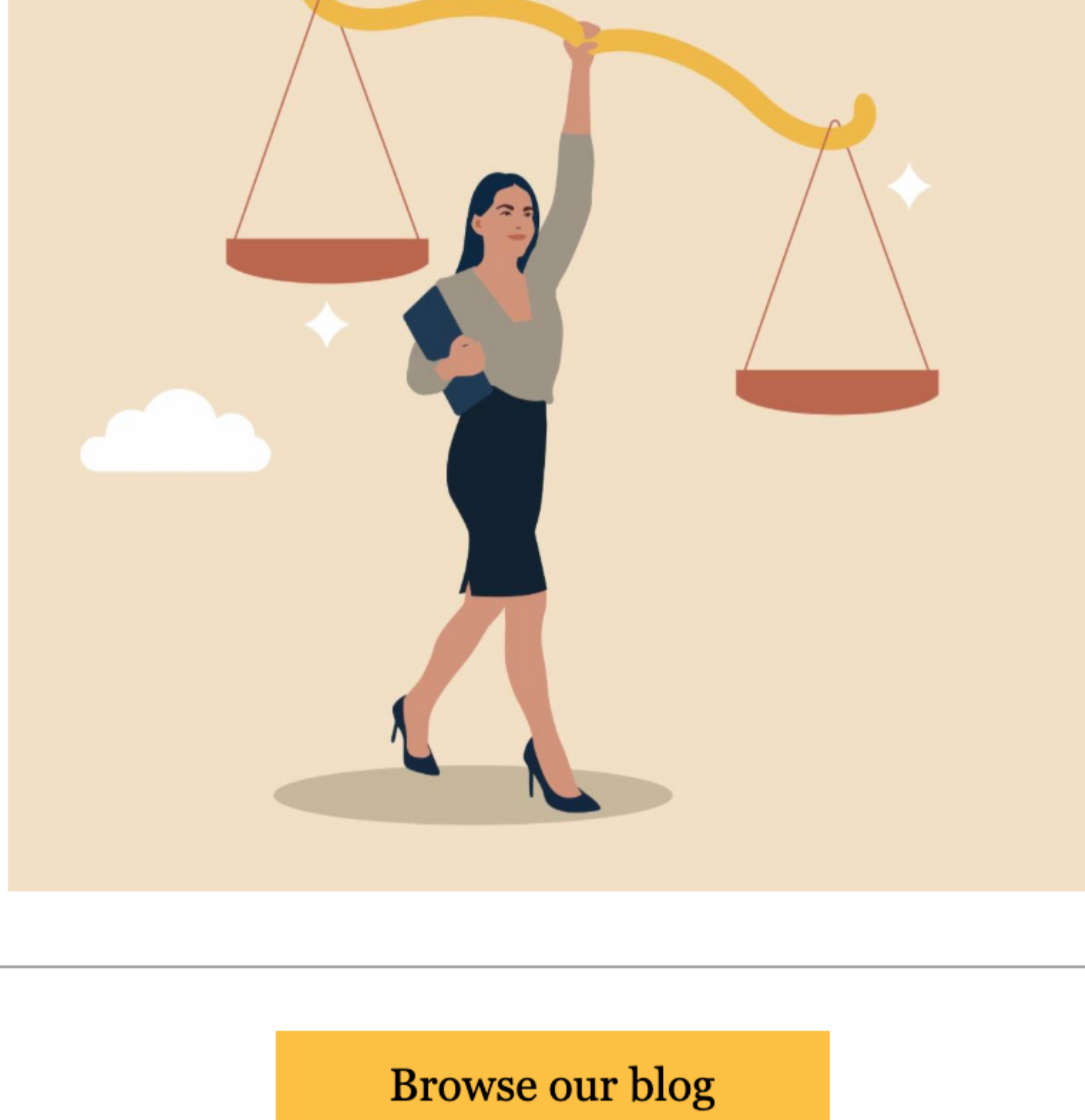


Have a safe and spectacular New

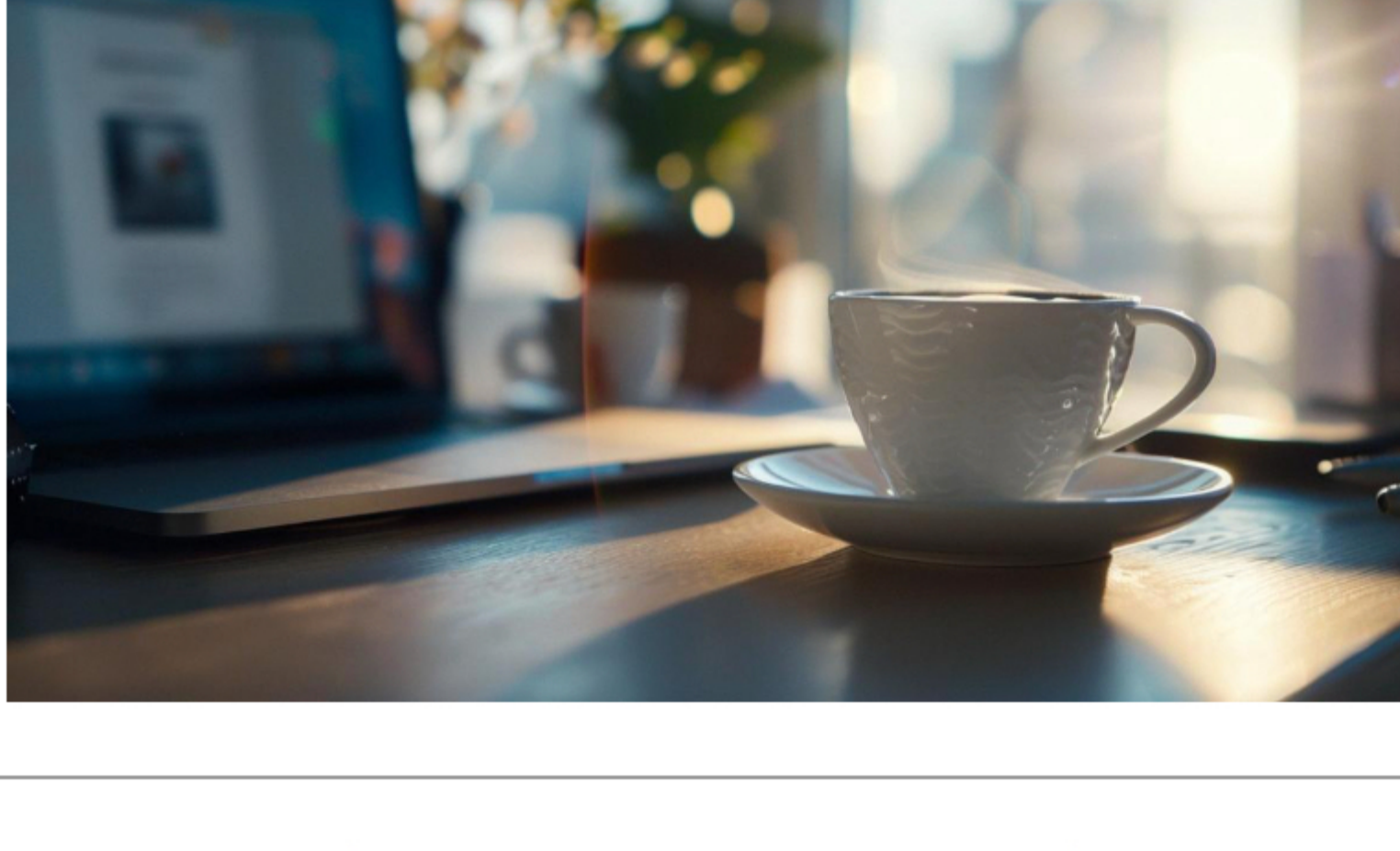
Year's Eve! Cheers to 2025!



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