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By Kendall A. VanConas
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CITATIONS

J U L Y - T W O T H O U S A N D E I G H T



2008 CONSERVATORSHIP LEGISLATION UPDATE – Part II

MATTHEW P. GUASCO
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“Life is much too important to be taken seriously.”

—Oscar Wilde, from The Importance of Being Earnest

Being VCBA President involves a number of tasks which one might describe as tedious, but it also includes many activities which are just plain fun. One such event is the swearing-in of new lawyers. We can all remember that day as the pay-off for a very long, hard, and expensive education. As I welcomed this year's new crop of lawyers, I could not help but share in their relief and joy. It was also wonderful to see the pride of the families of these new lawyers. Courthouses so often are places of conflict and sadness that it was nice to be in Courtroom Number 22 for such a fun afternoon.

I did not want to burden the new admittees with a lengthy speech. Ventura Superior Court Presiding Judge White and Court of Appeal Presiding Justice Gilbert reminded us all that speeches delivered at swearing-in ceremonies are memorably forgettable, so I had additional incentive to be brief. Of the few thoughts I offered, one stands out as the most useful advice I can give to any lawyer: be competent, care about your clients and cases, but don't take yourself or your work too seriously. In all things, find balance.

As I reflected on why I thought that was so important to tell these new lawyers, I realized that it is a mantra I have had to repeat to myself throughout my legal career. Being a lawyer carries a tremendous personal and professional responsibility to counsel, educate and represent the client, and to effectively and competently advocate his or her legal

PRESIDENT'S MESSAGE

By Matthew P. Guasco

position. We care about our clients and often take personally the things that happen to them in legal proceedings. Lawyering is also a business which must be managed efficiently and profitably. Add to these demands our commitments to our families and communities, and you can see why our profession is a very stressful one. There are many daily temptations to forget Wilde's advice and take our work and ourselves much too seriously.

We lawyers too often assume our clients' level of anxiety concerning the matters we handle. It is easy to understand why this happens. Advocacy is a competitive enterprise. We must attract and retain clients in order to prosper. We vigorously promote our clients' needs and interests in transactions or in court, often in direct competition with the needs and interests of clients being represented by other lawyers. At times, we become aggressively protective of our clients. The competitive enterprise of advocacy encourages lawyers to assume the mantle of their clients' perspectives and emotions. This, in turn, promotes conflict and raises our stress to unhealthy levels. Too often, the client's problems become the lawyer's problems.

This is a formula for making the practice of law, and life generally, much less enjoyable and much more stressful. Remembering that “life is much too important to be taken seriously” is a way of achieving balance between work and life. The saying also reminds me to avoid the pitfalls of self-importance and nurture an appropriate sense of humility. Wilde's saying is also ironic: Our work as lawyers often involves situations one must take seriously. Even so, we have a duty to ourselves, our families and our clients to not let the tragic, sad, angry, or violent facts with which we contend each day overwhelm us.

In 24 years of practicing law, I have seen lawyers who do a wonderful job for their clients while not taking themselves or their cases too seriously. I also have seen too many lawyers do precisely the opposite. It seems to me the former are happier and more successful than the latter. A sense of humor and perspective goes a long way in our profession. Their absence is telling. It reminds me of another saying, this time from a professional

baseball manager who never had a winning team: “You've got to love baseball to stay in it, otherwise 162 games per year is a long time to be in agony.”

Fortunately, for most of us the stresses of practicing law are manageable. We put them in the best perspective by reminding ourselves that our clients' or opponents' woes are not our own and that we must enjoy life and work in balance. Life is much too important to be taken too seriously. I cannot imagine a better argument for a vacation. On that note, have a wonderful summer.

Matthew P. Guasco is a mediator and arbitrator in Ventura. He is also Of Counsel to Norman Dowler, LLP, where he handles civil appeals and writs, as well as trial court motions.

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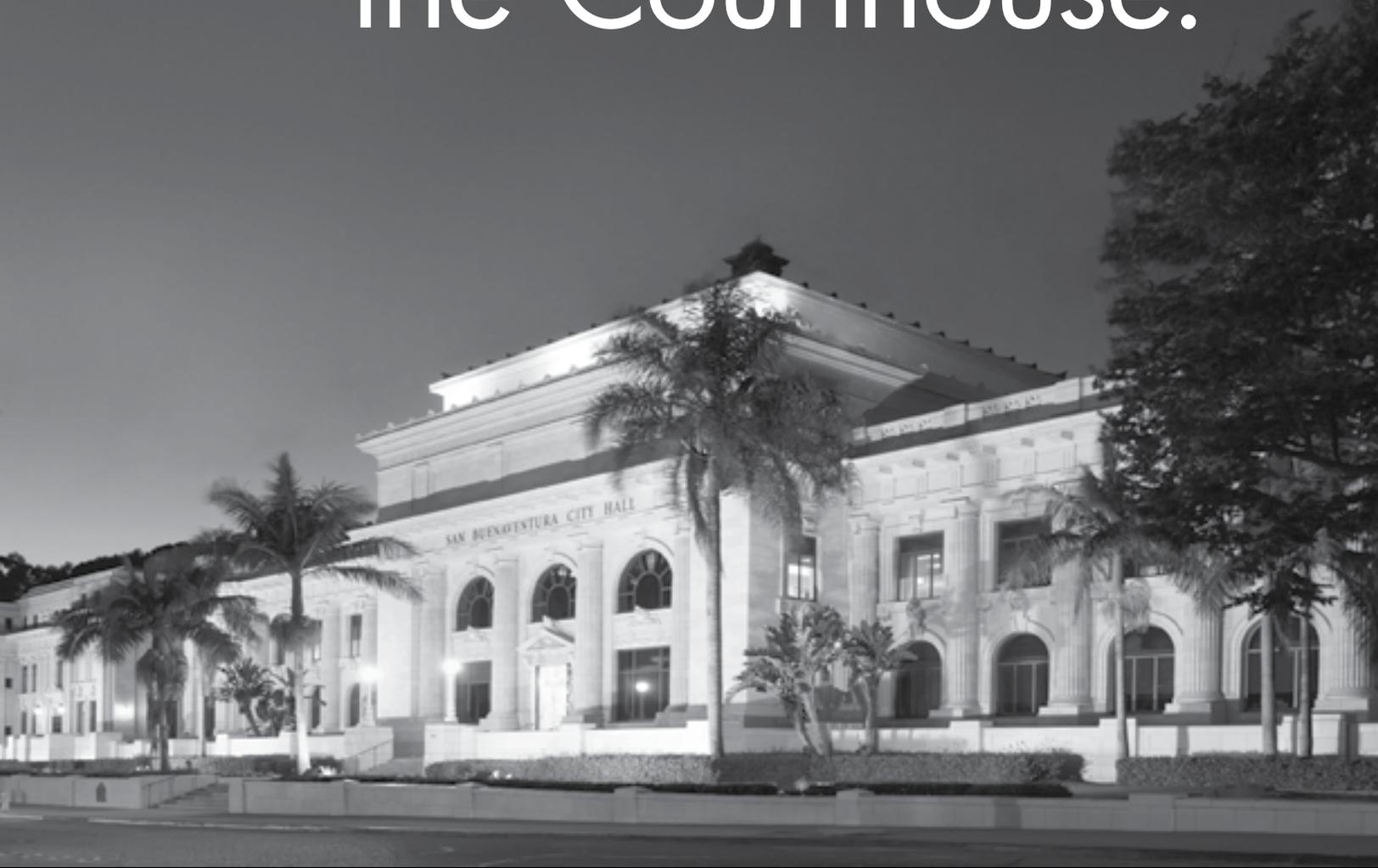
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ANIMAL SUFFRAGE: LET SLIP THE DOGS OF WAR

By Robert I. McMurry

I feel compelled to add a voice of reason to the cat fight between Michael McQueen and Kate Neiswender concerning the burgeoning animal rights movement. [CITATIONS, June 2008] It is admittedly difficult to choose between Mr. McQueen's self-described "judgmental, intolerant, curmudgeonly attitude" (absolutely right so far) about sympathy for the critters or Ms. Neiswender's outraged protestations on their behalf. Being a man of infinite tolerance, meaning I have no opinions about anything, I have no dog in this fight. I side with Missouri Congressman James Talent who when asked if he was a dog or cat person said, "Basically a dog person. I certainly, though, wouldn't want to offend my constituents who are cat people, and I should say that being, I hope, a sensitive person, that I have nothing against cats, and had cats when I was a boy, and if we didn't have the two dogs might very well be interested in having a cat now."

I should mention that although I have no position on this subject I have some considerable credibility to back it up. As a former roustabout and professional gambler (true) I take considerable umbrage at Michael's proposal to ban dog racing, horse racing, rodeos, circuses, recreational horse back riding, zoos, and the pig races at the County Fair, all of which I have considerable experience with. (Since I was an English major – I really got around – I endeavor to avoid the practice of ending a sentence with a preposition, something "up with which I will not put" as Winston Churchill said, but you try that sentence any other way.) Actually I have no history with pig races, but I am willing to defer to Mr. McQueen's expertise in that area. I was Lassie's lawyer (true) so unless Michael or Kate can claim Rin Tin Tin I think I have a leg up on the hydrant there. I also dated a groupie who grouped with Three Dog Night, and most of you don't even know what that means. (On cold Australian nights outbackers would

sleep next to one of their dogs for warmth, or if it was really cold one dog on each side, and on truly freezing nights...well you can work the numbers out.)

To begin the debate, as you probably thought I never would, cats are, of course, smarter than dogs – try getting eight cats to pull you in a sled – but all dogs go to heaven, even Reservoir Dogs. An Irish proverb cautions one to "Beware of people who dislike cats" but Garrison Kiellor retorts that "Cats are intended to teach us that not everything in nature has a purpose." Leonardo de Vinci – let's bring in the heavy hitters here – claimed that "The smallest feline is a masterpiece." It was David Platt who first said "Managing senior programmers is like herding cats" but he never gets credit for the much-used phrase, suffering the fate of philosopher Alphonse Karr who in 1922 observed "The more things change, the more they stay the same" and was forever doomed to hear his words attributed as "an old French proverb."

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Whichever, who cares? As Sonjay Anand points out, "The purpose of a liberal arts education is to learn that a person can like both cats AND dogs."

Why should two otherwise gainfully employed attorneys even brief the issue? Michael is likely the broadly misanthropic type who has no pets save a spouse, domestic partner or (by the time this is printed) both, while Kate probably has multiple dogs, cats, chinchillas, children and whatnot. (I am a snake person, but that is a horse of a different color.) Both may be wonderful owners or parents, two very different categories, but as William Penn noted, "Men are generally more careful of the breed of their horses and dogs than of their children." Neither seems like the type to be converted no matter what the other says, proving the wisdom of Robert Heinlein (true, improbably enough, though Mark Twain gets the credit; it seems like the kind of thing he would say, not Heinlein): "Never try to teach a pig to sing, it wastes your time and it annoys the pig."

I agree with Mr. McQueen that in a world with far greater concerns – the Lakers are in the playoffs [when this was written ed.] and we still don't know whether Angelina really had twins – Ms. Neiswender's obsession with whether Tweety, Bonzo, and all creatures great and small are being abused ill behooves her (two points if you caught that one). Personally I don't care. PETA says her cause is the successor to the civil rights movement, and I don't mind if a dog sits next to me at a lunch counter or even marries my daughter (see Penn, *supra*). As a land use lawyer, which is what happens to you if you fail as a roustabout, gambler, and English major, I always tell environmentalists that it's my world too, and I'm entitled to destroy my part of it, and if Michael wants to kick his dog around, that's his business. As for the current fashion of pet humanization and beatification, "God speed the day when this knighting fad/ Shall go to the dogs and the dogs go mad" (Ambrose Bierce).

If we are now going to insist on animal rights as good as ours, however, let's go full boar (yes, we know) and stick them with

Continued on page 10.



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ANIMAL SUFFRAGE: LET SLIP THE DOGS OF WAR

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the obligations too. "In our day the accused is usually a human being, or a socialist, but in medieval times, animals, fishes, reptiles and insects were brought to trial. A beast that had taken human life, or practiced sorcery, was duly arrested, tried and, if condemned, put to death by the public executioner. Insects ravaging grain fields, orchards or vineyards were cited to appeal by counsel before a civil tribunal, and after testimony, argument and condemnation, if they continued in contumacious the matter was taken to a high ecclesiastical court, where they were solemnly excommunicated and anathematized. In a street of Toledo, some pigs that had wickedly run between the viceroy's legs, upsetting him, were arrested on a warrant, tried and punished. In Naples an ass was condemned to be burned at the stake, but the sentence appears not to have been executed." (Bierce again.)

Let their inherent nature be used as a defense in such trials (Twinkies worked, after all) I must disagree with Mr. McQueen's assertion that we should recognize all domesticated animals were once wild. I have seen a young lady in Beverly Hills walking her two pink poodles, and I can assure you that neither they nor their ancestors ever survived more than one day in the wild, and that only because it might take the hyenas a full day to stop laughing before ripping the dogs into flamingo hors d'oeuvres.

As Forrest Gump said, "That's all I have to say about that." So, dear readers, curl up next to your dog, or in Kate's case three of them, and await the next entry in this saga of silliness. Ms. Neiswender, I think it's your turn.

Robert I. McMurry is an attorney practicing land use law in Los Angeles and Ventura Counties.

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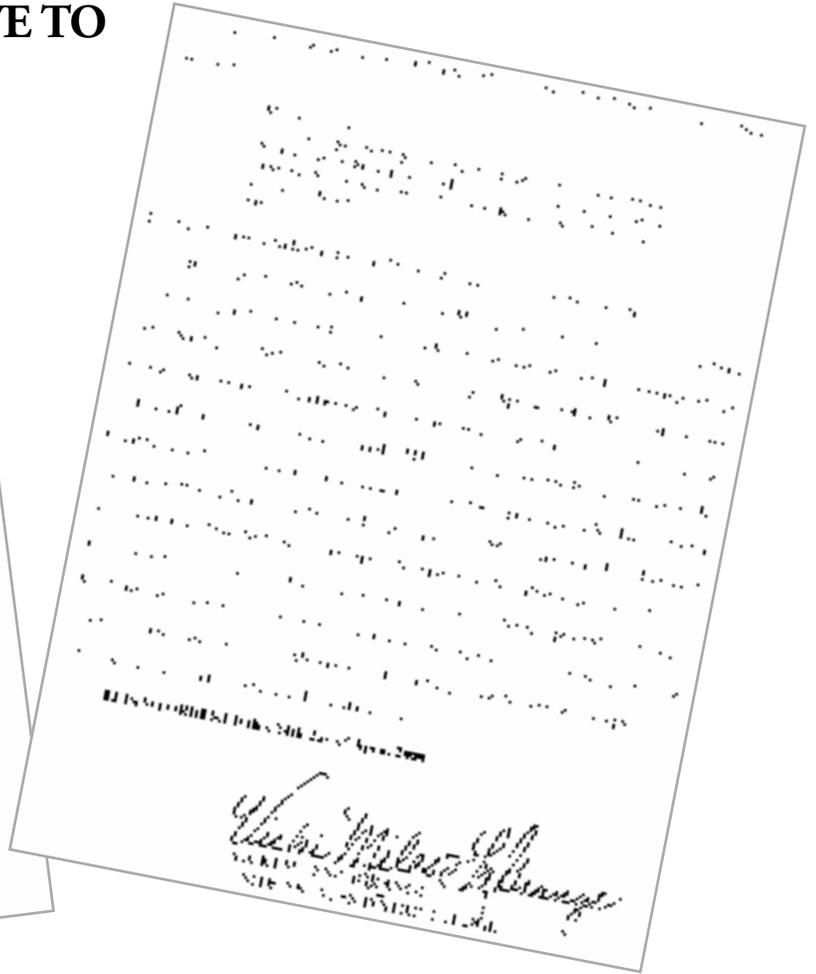
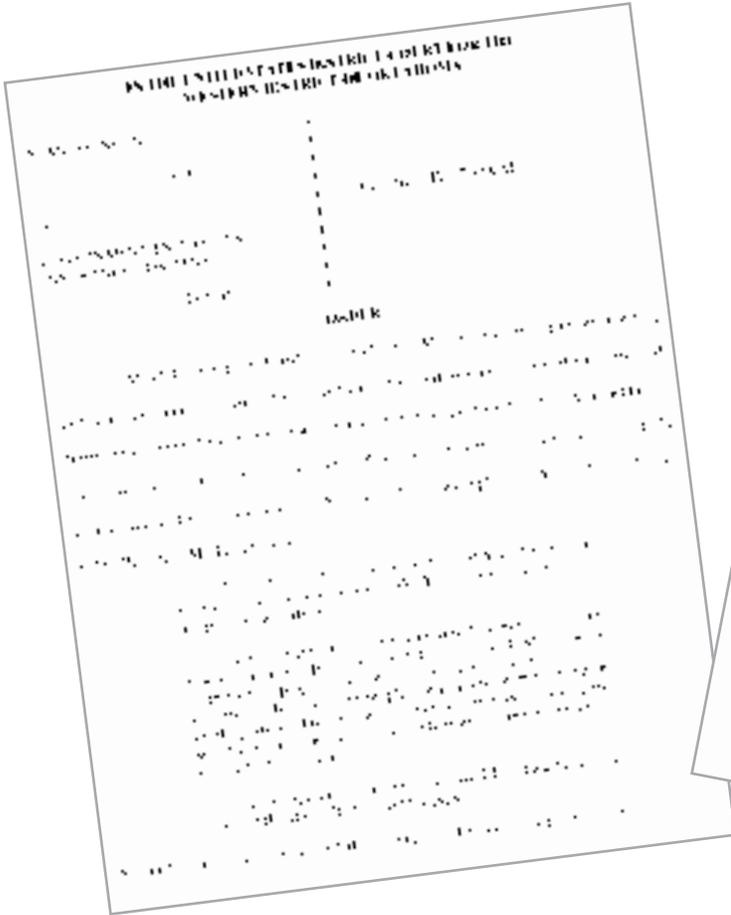
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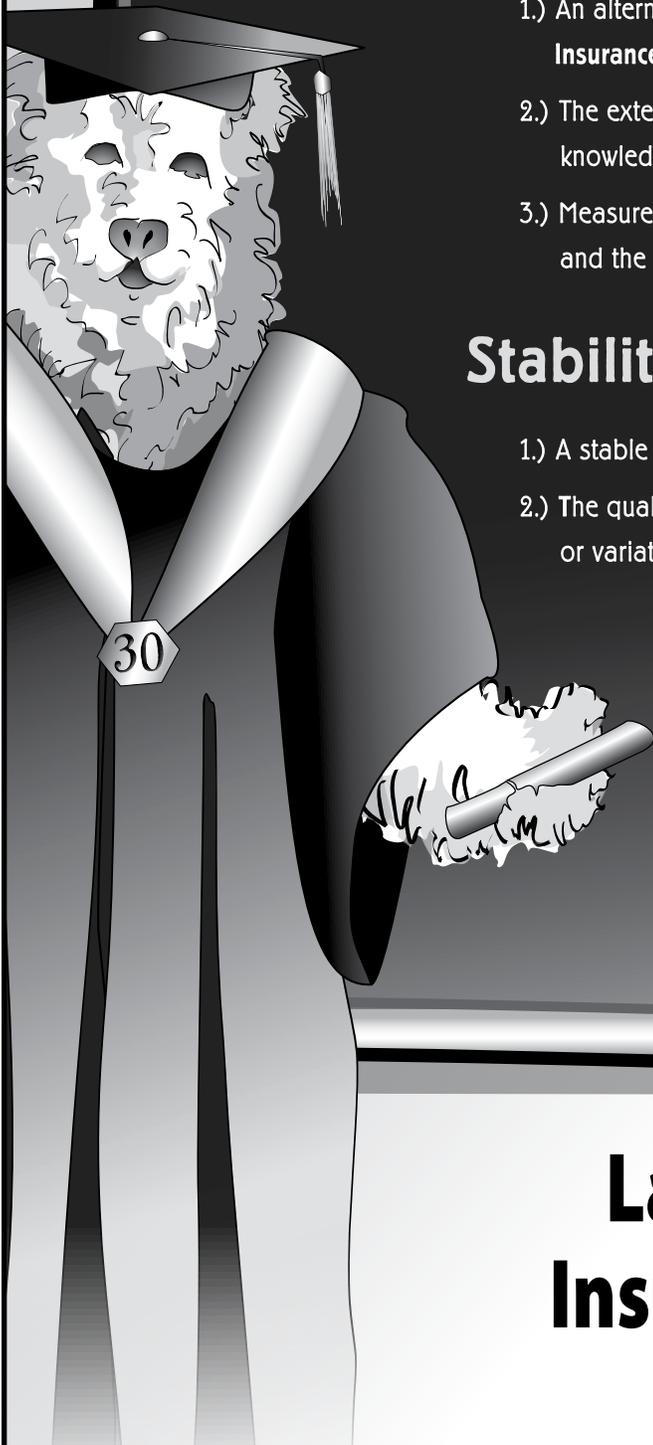
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2008 CONSERVATORSHIP LEGISLATION UPDATE – Part Two

By Kendall A. Van Conas

This is part two of a yet-to-be-determined number of articles highlighting recent changes in conservatorship law. For those of you who waited on the edges of your seats in June for part two, I apologize for the month's delay. But don't hold your breath, because part three might not arrive in August. Summer beckons . . .

Temporary Conservatorships (\$2250) – The entire Omnibus Conservatorship and Guardianship Reform Act of 2006 was the result of a series of articles in the Los Angeles Times in November 2005, that documented some abuses in California's "broken" conservatorship system. Even though one of the architects of the Act himself stated that most conservators are doing a good job and not abusing the system, the legislature felt compelled to overhaul the entire system. The changes in the temporary conservatorship procedures highlight the areas where the proposed conservatee is perceived to be most vulnerable.

The changes to the temporary conservatorship laws have come in two batches. The first batch originated in AB 1363, which was approved by

the Governor in September 2006, and became effective July 1, 2007. The second batch came in under AB 1727, which was approved by the Governor in October 2007, and became effective this year. This summary will review both sets of changes without reference to the date that each part became effective.

(1) If the petitioner is a private professional conservator or professional fiduciary, the petition for temporary conservatorship must contain: (a) the petitioner's registration or license information, and (b) an explanation of how the petitioner came to the case, including any prior relationship the petitioner had with the proposed conservatee, or his/her family and friends.

(2) Unless the petition is filed by the proposed conservatee (which is rare), the petition must contain a declaration of due diligence showing: (a) the efforts to find the proposed conservatee's second degree relatives, or why they could not be contacted, and (b) the proposed conservatee's preferences toward the temporary conservatorship and the proposed conservator, or why those preferences cannot be obtained.

(3) Notice of the hearing, along with a copy of the petition, must be "personally delivered" to the proposed conservatee, and must also be served on all the persons required to be named in the petition for appointment, i.e., the spouse and the proposed conservatee's second degree relatives (or beyond the second degree, if none exist). Service must also be made upon the public guardian if the petitioner and the proposed conservator have no prior relationship with the proposed conservatee, and the proposed conservator was not nominated to serve.

(4) By legislative directive, the Judicial Council adopted CRC 7.1012 (applicable to guardianships) and CRC 7.1062 (applicable to conservatorships) establishing "uniform standards for good cause exceptions" to the notice requirements described above. By code, the new rule is limited to only those cases where waiver of notice is "essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm." Under the new rules, effective January 1, 2008, the court may change the time or manner of giving notice, and good cause may include a showing of: (1) harm



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caused by the passage of time (2) harm that might be done to the proposed conservatee, or his/her estate, by someone entitled to notice (3) a medical emergency, or (4) a medical or financial emergency.

(5) There are also additional rules governing the court's duty to set a hearing date on a petition to terminate a temporary conservatorship, and to reconsider temporary orders made on an ex parte basis. Different notice periods apply to each of these hearings, so the reader is strongly encouraged to review those sections.

(6) The legislature heaped a load of additional investigative duties on the court investigator in the two bills mentioned above, and temporary conservatorships did not escape the mandate.

Before the hearing on the temporary petition, the investigator must prepare a report which must include interviews with the proposed conservatee, the petitioner and the proposed conservator, along with the proposed conservatee's spouse, first degree relatives, neighbors, close friends and, to the extent possible, the conservatee's second degree relatives. If all that is "not feasible" before the hearing date, the investigator is permitted to prepare an abbreviated report that must be completed within two days after the hearing on the temporary petition.

The changes to the temporary conservatorship statutes have been fairly broad and burdensome and, based on my wholly non-scientific method of gathering information, seem to have reduced the filings and the number of attorneys still willing to go forward on a temporary petition. On the bright side, our court investigator's office has been doing a fine job of keeping up with the increased duties.

New Accounting Format Rules – One of the scariest things to come out of the Omnibus legislation was the promise to adopt mandatory forms for accounting. Although not as frightening in reality as it was in theory, CRC 7.575 (effective January 1, 2008) is deserving of your time, and I encourage you to review it, and adopt your forms as the case may be.

The rule throws all accountings into two forms, either a "standard" accounting form (which lists transactions by way of subject matter), or a "simplified" accounting form (which lists transactions chronologically). Depending

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upon the circumstances of your estate, you will be required to file either a standard accounting or a simplified accounting. For example, if there is real property in the estate, or a trade or business, you must prepare a standard accounting. A standard accounting must also be filed if your schedule of transactions (receipts or disbursements) runs more than five pages, but read the rule carefully for the exception to that rule . . . and the exception to the exception! [CRC 7.575(c)]

The label "simplified" is a bit of a misnomer in that, if you are permitted to file a simplified accounting, you are required to use the new judicial council forms for your summary, schedule of receipts and schedule of disbursements. This is no easy task if your accounting has already been prepared on your tried-and-true Excel template. For standard accounting filers, there is only one mandatory judicial council form.

Also note that under the new rule, a conservator or guardian is always permitted to file a standard accounting, even if he or she could get away with a simplified accounting format.

BONUS: Decedent's Estate Rule – The legislature has been so busy making miserable the lives of conservators and their attorneys that the remaining divisions of the Probate Code have been pretty much left alone. One notable exception to that is a new notice requirement, contained in the newly added subdivision (c) to section 9202.

9202(c) requires notice to the Franchise Tax Board within 90 days after the date of issuance of letters to a general personal representative. The notice requirement is effective for letters first issued on or after July 1, 2008. The Franchise Tax Board's website indicates that we comply with the new rule by mailing them "letters of administration." Presumably, notice should be given regardless of whether the court issues Letters of Administration or Letters Testamentary.

Check out the FTB's website for their take on the notice rule, along with a mailing address and fax number, at: www.ftb.ca.gov/individuals/faq/decedents_in_probate.shtml

Kendall A. Van Conas is a partner at Arnold, Bleuel, LaRochelle, Mathews & Zirbel, LLP in Oxnard.

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PRO-BONO HIGHLIGHTS

By Verna R. Kagan

VLSP recently held a meeting of Emeritus Attorneys and pro bono attorneys. Our objective, as always, was to determine how we could further improve the pro bono program. The meeting was very upbeat and I personally feel a renewed burst of enthusiasm. I would like to express my delight and gratitude to everyone who attended.

At the request of our attorneys, we are paying closer attention to the credibility and integrity of our applicants. Most of our applicants are quite gracious and polite; others have admittedly become nuisances and chronic complainers. To address this problem, we will change our introductory letter and interview process to impress upon them the value of the work they receive and the quality of our attorneys.

A reminder: we now have Spanish-English interpreters available. We have received very positive feedback from those attorneys who have used them.

Another reminder: we have an Emeritus Attorney staff member who can assist with depositions, research and other litigation services. Call us if you could use his help.

We are arranging for our pro bono attorneys to receive one free MCLE credit per year. If you are interested, please let us know which credits you would find most useful. There was also an enthusiastic request for an MCLE program on limited-scope representation in family law and civil proceedings. We are working on this, so keep checking CITATIONS for an announcement.

Verna R. Kagan is VLSP Senior Emeritus Attorney.

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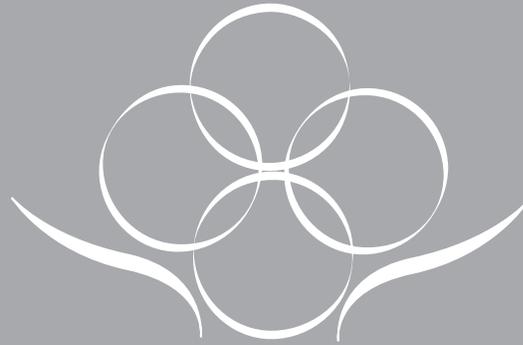
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By Lou Vigorita

A Ventura task force is charged with implementing the Ten Year Plan to End Homelessness. One part of the plan is the One Stop Shop, organized by Kate Mills, the County's Public Health Administrator.

Through my church, I have been asked to help attorney Jim Farley coordinate legal volunteers to spend an hour – from 12:00-1:00 p.m. – on any Tuesday, at the County Public Health Auditorium (corner of Loma Vista Road and Hillmont Ave. in Ventura). Volunteers will review legal matters that the homeless present. Other social services are well represented: St. Vincent de Paul provides lunches, and Behavioral Health, Medicare, Medi-Cal, housing, and dentistry services are all offered, but the legal community is not represented. We hope to rectify this.

Please contact me at lvigorita@vigorita.com or Jim Farley at farcass@pacbell.net if you have any questions and especially if you would like to sign up to try this out one Tuesday. Or just stop by and check it out for yourself.

Lou Vigorita handles workers' compensation and Social Security matters in Ventura.

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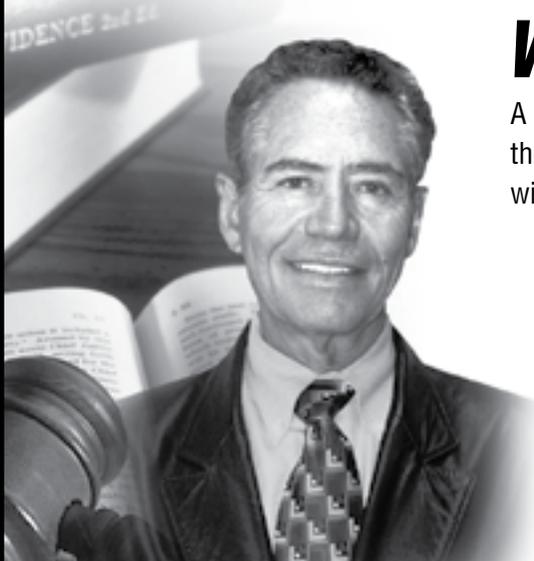
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Fax (805) 485-2751
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Who took those fascinating pictures, 400 plus and counting, of the Law Day 5K Race and received no photo credits in the June issue of CITATIONS? That would be photographer extraordinaire, **Lou Carpiac**. To see 'em all, go to www.lawday5k.com. One last note on the 5K gathering – **Vince Duke** was the poor sap that happened to drive his jeep to the event. (DCR Court Reporters sponsored the after race taco feed) Good Guy Award to Vince for hauling off all the trash from the day's activities...From Abraham Lincoln: "The best way to get a bad law repealed is to enforce it strictly"...Two prominent human rights lawyers in China lost their licenses after volunteering to defend Tibetans charged in the violent anti-China protests that erupted in March – according to the *NY Times* (Sunday, June 8), Teng Biao and Jiang Tianyong, known for taking politically sensitive cases, did not have their government licenses renewed...China? **Becky McCarthy** at mcarthy@psrllp.com. Maui? **David Shain** at dshain@fcoplaw.com. Lake Powell House Boat? **Susan McCarthy** at smcarthy@atozlaw.com...

11 new lawyers were admitted to the bar during the swearing-in ceremony held June 4 in Courtroom #22. **Justice Arthur Gilbert** presided while **Judges Toy White** and **Kevin McGee** assisted. One of the presenters, **Carmen Ramirez**, told the story of her hearing the news for the first time she had actually passed the bar. Carmen reported she "vomited on the hour for 48 hours." To

Exec's Dot...Dot...Dot...

By Steve Henderson, Executive Director, M.A., CAE

which **Justice Gilbert** said, "I'm afraid to know what would have happened if you had failed." Attending the ceremony was **Steve Feder**, who was spotted helping a mother and her infant child quiet by making funny faces. Carmen would make an exemplary State Bar President...From Samuel Johnson: "I would be loathe to speak ill of any person I do not know deserves it, but I am afraid he is an attorney."...And here is a nugget from Pascal: "An advocate who has been paid well in advance will find the cause he is pleading to be all the more just"...New lawyer hired at Ferguson, Case et al., **Josh Burt**, formerly of Howrey LLP in Los Angeles, is a 6th year associate specializing in trademarks, IP, and business litigation. He resides in Ventura with his wife, Sloane, and one-year-old son, Elijah. Sloane is a Ventura native...

Barrister **John Negley** has gone solo doing primarily family law. Renting space from **Allan Greenfield** on County Square Drive. He can be reached at jnegley@negleylaw.com or 644-4222. John is a member of the JHB Inn of Court and previously worked at the Law Offices of **Greg Pyfrom**...Top 20 Movie – Ok, I admit it, I really, really, loathe Tom Cruise as a person and as an actor. BUT, watched again, *Born on the 4th of July*, from the opening parade to the Democratic National Convention. Good stuff, Tommy! Ron Kovic having it out with Charlie (Willem Dafoe) on a deserted road in the Mexican desert was captivating...Another gem from Abe: "Never stir up litigation. A worse man can scarcely be found who does this – A moral tone ought to be infused into the profession which should drive such men out of it"...Who Knew? The North American black-necked stilt is affectionately referred to as the "lawyer bird" because one of its identifying features is a large bill...From Benjamin Disraeli: "When men are pure, laws are useless; when men are corrupt, laws are broken"...**Kevin P. McVerry**, formerly of Graves, Robertson & Bourassa, has opened his own shop in Camarillo doing civil, criminal and business litigation. Kevin@mcverrylaw.com or 484.5600...

Kudos to **Rick Loy** and **Vern Ellicott** because both completed the "King of the Mountains" bicycle challenge held late May. The KOM

is a series of three one-day rides totaling 323 miles while climbing 30,800 feet! Only 14 riders survived, due mostly to temperatures crossing the century mark several times. The second ride caught my attention. Called *The Breathless Agony*, it includes a 30-mile climb from Redlands to Onyx Summit at 8,400 feet. Way to go guys...From David Melinkoff: "Lawyers as a group are no more dedicated to justice or public service than a private utility is dedicated to giving light"...**Arnold Gross** will be going with the UCLA Alumni Band to perform at the Shanghai Arts Festival in China from September 7-16. He'll be joined by the Bruin Spirit Squad while dazzling the Chinese people with his prowess on the clarinet. Arnold has been on the Alumni Band since '86 and plays before all football games at the Rose Bowl. He's been playing since the 6th grade...License Plate of the Month: JATSRAM on a late model 745 BMW captained by **Robert Baskin**...**Rick Rabbin** married May 17 and he and Sally plan an extended honeymoon later in the year...

There is a new law firm in town **Gutiérrez, Curtis & Gutiérrez**, it includes two retired judges ...From Actual Court Records: "A D.A.'s entire closing argument in a drunk driving case: Roses are red, Violets are blue, Point one five, Means drunk to you." The verdict was guilty...From Hal Philip Walker: "Congress is run by lawyers. A lawyer is trained for two things and two things only. To clarify – that's one. And to confuse – that's the other. He does whichever is to his client's advantage..."

Steve "Tiger" Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. He remains unclear about his presidential choice but is resentful about shelling out \$5 a gallon for petrol. In contrast, he enjoys purchasing a venti hot chocolate for \$3.50 (tax included) from Starbucks. Lastly, he will be bowling 250-plus during the Barristers' Bowling Night July 17. For details – kep@wood-bender.com.

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