VENTURA COUNTY BAR ASSOCIATION

VCBA MISSION STATEMENT
To promote legal excellence, high ethical standards and professional conduct in the practice of law; to improve access to legal services for all people in Ventura County; and to work to improve the administration of justice.

CITATIONS

A U G U S T – T W O T H O U S A N D T E N

ALERT: FILING PROCEDURE CHANGED

By William M. Grewe

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October 12, 2009

Jack Trimarco & Associates
Polygraph/Investigations Inc.
9454 Wilshire Boulevard, 6th Floor
Beverly Hills, CA 90212

Dear Jack:

It was good to have a chance to talk with you today. I write to emphasize my appreciation for your good work on the cases on which you consulted with us.

I have found that your professionalism in conducting and scoring polygraph examinations is outstanding. Your reputation for integrity as a polygrapher was known while you were with the FBI and has continued into your years of private practice. Both your professional work product and your excellent reputation are particularly important to me as a criminal defense lawyer.

We do not routinely use polygraph exams but, when we do, we expect an honest confidential examination and report. Whether or not we choose to disclose the report, the examination and report are often very important to the client and often influence choices we make in strategizing with that client.

When we do decide to disclose the report in an attempt to convince a reluctant prosecutor of a client's innocence, a favorable polygraph report alone is not sufficient. The professionalism of the examination and the reputation of the polygrapher are critical.

In the recent case you worked on with us, we submitted your report along with witness interviews and other materials to the prosecutor. As you know, it was dismissed in its entirety on the day of trial. It was a felony case being vigorously prosecuted and the consequences of any conviction would have been devastating to my client's life and career. Being able to disclose your solid report backed by your substantial credentials was an important aspect of asserting our client's innocence.

Thank you again, Jack, and I will look forward to working with you in the future.

Best regards,

SANGER & SWYSEN

Robert M. Sanger

FINANCIAL CRISIS HITS VOLUNTEER LAWYER SERVICES PROGRAM

By Kendall VanConas

Devoted readers of this column know that I have occasionally used my President's Message as a place to light-heartedly publicize the VCBA's Volunteer Lawyer Services Program, Inc. (VLSP), our pro bono legal services program, and to engage in some modest fund-raising for the program. It has been fun to do that, and I appreciate the participation by **Ben Shuck**, **Lou Vigorita**, **Katie Pietrolungo** and others. However, the fact of the matter is that the financial situation of VLSP is dire, and the help the program needs now goes beyond my meager efforts to date.

In my President's message for March, I wrote about VLSP as part of my column describing the February Bar Leaders Conference. By way of a quick refresher course, please remember how very special and highly regarded this program has become over the last 15 years, with hundreds of lawyers providing untold hours of pro-bono legal services to the low-income and underserved population in the county. The program received special recognition in 2002, when our Emeritus Team of attorneys was awarded the California State Bar President's Distinguished Pro Bono Service Award, honoring their commitment to provide legal services to the poor in our county.

And let's face it – nobody can say no to **Verna Kagan**, VLSP's Program Manager. Always ready with a warm smile and a get-to-work attitude, Verna's energy is infectious, and her devotion to VLSP is ever-present. She is the personification of VLSP, and my personal hero when it comes to how a septuagenarian should live her life.

I sat down recently with Verna and she shared with me some up-to-the-minute statistics about the program. In 2009, VLSP handled 290 referrals for pro bono legal services, and through July 15 of this year, the program has handled over 130. Roughly half of the referrals were family law cases, dealing with child custody and visitation issues, while the remaining cases called for assistance with landlord-tenant matters, guardianships, and other legal matters. Verna also told me that the program has seen a marked increase in the number of people needing help due to the economic crisis, particularly with respect to housing, and those who have fallen victim to the various loan modification scams that have emerged in the wake of the housing market's troubles. Vulnerable homeowners become victims of these programs, and VLSP refers many of these cases to the Real Estate Fraud Unit at the Ventura County District Attorney's Office.

But it's not all facts and figures, and each of the 130 matters that have crossed Verna's desk this year has a face and story to go with it. Some of the most rewarding and memorable cases that VLSP works on involve families and children. Verna recalled for me the recent case of Bryan, a 13-year-old boy whose grandmother, Carmen Apodaca, wanted to adopt him (Apodaca's case was also the subject of a May 29, 2009 story in the *Ventura County Star*). She had raised Bryan since he was just two weeks old, when she rescued him from a crack house and a bleak future. Bryan's mother died when he was five years old, and Carmen has been the only mother he ever knew. Bryan already called Carmen "Mom," but the law didn't recognize Carmen as anything more than a de facto guardian for Bryan.

It was the story of Bryan and Carmen that brought adoption attorney **Michelle Erich** to the VLSP Board in early 2009. Michelle had agreed to represent Carmen on a pro bono basis, but the home study required under state law runs a whopping $4,500. With free legal services and waivers of court fees, Carmen's costs were reduced to $500, but on her monthly disability income, that figure was still insurmountable.

Michelle submitted a proposal that would allow VLSP to cover the costs of Bryan's adoption. Through Michelle initiative, VLSP now has an ad hoc program that will review a request on a case-by-case basis, and if the applicant's criteria fit, the adoption fee will be covered. Bryan and Carmen were the first family to be approved, and their story touched Verna, as she recalled Bryan telling Carmen after the adoption was approved that he could then "legally" call her mom. You can read more about Bryan and Carmen's story at www.vcstar.com/news/2009/may/26/new-county-program-helping-low-income-families.

Along with cases like Carmen's, VLSP also handles those that range from the unusual to the bizarre. Thanks to Verna's efforts, along with pro bono mediation services provided by the **Hon. Melinda A. Johnson** (Retired), VLSP recently assisted a family in resolving a bitter dispute over the burial of the cremains of their loved one. Verna is also presently helping a woman who has repeatedly received text messages telling her that her former husband and the father of her children is deceased. The problem is nobody can confirm it, or provide her with the hospital he was treated at, the circumstances of his death, or where he was buried. The most likely explanation is that he hopes to be considered dead, and thereby avoid payment of his child support. The poor fellow might wish he were dead if Verna finds him.

Verna writes a column that appears most months in this publication, Pro Bono Highlights. I encourage you to read it, and find out more about the devoted people who make up VLSP, and the attorneys who donate their services pro bono to the needy in the county.

At this point, you might be wondering when is the grim news and the plea for money coming? Well, here it is. The news is grim, and the need is real. At the mid-point in the calendar year, VLSP generally has approximately $60,000 cash on hand to

Continued on page 7

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A MESSAGE FROM THE VCBA/VLSP, INC.

The Best Thing We Do!

Your Pro Bono Arm of the Ventura County Bar Association
A 501(c)(3) Organization Established in 1996

Since 1992, the Annenberg Foundation has contributed a total of $210,000 to the VCBA/VLSP, Inc., the Award-Winning Pro Bono Program of our Bar Association. Regrettably, the foundation is drastically reducing its commitment. In order to compensate for this significant funding crisis, the VCBA/VLSP, Inc. has established a Blue Ribbon Committee, chaired by past president of the bar, Jonathan Light (2008), to raise funds for our pro bono program.

These Firms and Individuals have committed annually through 2014

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FINANCIAL CRISIS HITS VOLUNTEER LAWYER PROGRAM

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run the program. Not a fabulously large sum of money, I must admit. But over the years Steve Henderson has used his considerable budgeting talents to successfully manage this money to last throughout the balance of the year. At the mid-point this year, VLSP had only about $13,000 cash on hand, and as talented as he is, Steve has no rabbits to pull out of his hat.

As the financial crisis became apparent, the VLSP Board of Directors kicked into gear to develop a fundraising mission. Thanks to the leadership of past-President **Jon Light** (2007), VLSP now has commitments from 18 lawyers, law firms and past-Presidents to support VLSP, most on an annual basis for up to five years (see page 6). If you haven't already, you can expect to receive a phone call from either Jon or another one of our talented and persuasive board members asking you to support this most worthy activity of the Bar. As I write this, Jon and his committee have received over $25,000 in pledges, and are still working to contact as many people as possible to donate to VLSP. ***In this issue, you will find an outline of the commitments received to date, the giving opportunities, and a suggested amount that you can give, based on the size of your firm and your ability.*** The plain and simple fact of the matter is that without your additional support, VLSP will simply be unable to continue with its mission. I thank you in advance for your pledge to support VLSP.

I also want to emphasize that we are not reliant solely on the generosity of our members to support VLSP. Fundraising occurs throughout the year from a variety of sources, including institutional donors, a small endowment at the Ventura County Community Foundation, and section events that regularly donate a portion of their proceeds to VLSP; the Ventura County Paralegal Association's Annual Silent Auction and Wine Tasting; and the Ventura County Legal Professionals Association's Annual "Boss of the Year" and "Secretary of the Year" Dinners. Thanks to President-Elect **Joe Strohman**, the Law Day 5K regularly brings in thousands of dollars a year for the program.

Oh, and there's one more fundraiser coming up that I must mention. Please mark your calendars for **Thursday, October 7, at 5:30 p.m.**, when we will be celebrating the occasion of Steve Henderson's 20th year as our Executive Director. Please drop by the Topa Tower Club between 5:30 and 8:00 p.m., and raise a glass in honor of our fearless leader. As large a portion of the proceeds as possible will benefit VLSP, and I hope to see you all there. Those of you who know Steve know that this event is not something that he is clamoring for and, in fact, is only learning about it as he reads this column for the very first time. Sorry, Steve. The planning committee did consider Steve's wishes and vigorously debated the issue for at least 90 seconds. In the end, we decided that since it will be a fundraiser for VLSP, Steve might be a little upset, but we were going to go forward with the event anyway. And, it gave us our theme for the party, "The Hell With Him, We're Going To Do It Anyway!"

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FAMILY LAW DISPATCH: WHO GETS THE "BABY?" (THE FAMILY BUSINESS, THAT IS!)

By Gregory W. Herring

Businesses are often the real "babies" at issue in marital dissolution cases. Family courts have great discretion in dividing a community's interest in enterprises that are not dependent on one spouse's professional certification or license to run it (such as a law or medical practice). If both spouses want the community's interest in a business, the question becomes whether to divide it or award it entirely to one of the spouses? If the interest is capable of in-kind division, the court may so order, because that is the clearest way of achieving an equal division. Family courts, however, have great discretion.

The General Rule Under *Brigden*: In-kind Division of Community Property Assets *Except Where Economic Circumstances Warrant.*

A party pursuing a division of the community's interest in a business would find support in the seminal case, *In re Marriage of Brigden* (1978) 80 Cal.App.3d 380. *Brigden* established that in-kind division is the general rule. There, the Court of Appeal reversed a trial court that had awarded the husband the major community asset – shares of stock in Logicon, Inc., a corporation for which he worked and was on the board of directors.

The Court held that the trial court's failure to award the wife half of the shares outright resulted in an unequal division of property in violation of Family Code section 2550. (Section 2550 provides for the equal division of community estates.) It also held that, although section 2601 provides an exception, allowing an award of one asset entirely to one party, it only applies as a limited exception "*where economic circumstances warrant.*" (Section 2601 provides, "[w]here economic circumstances warrant, the court may award an asset of the community estate to one party on such conditions as the court deems proper to effect a substantially equal division of the community estate.")

The Court emphasized that "economic circumstances" should be narrowly interpreted:

> "Equal in kind division avoids valuation problems. It eliminates the need to place a disproportionate risk of loss on either party, is impervious to charges of favoritism, and apportions the risk of future tax liabilities equally. It also accomplishes an immediate division of property and provides the parties with the most post-dissolution economic stability."

***Brigden's* Limitations:**

Blind reliance on *Brigden*, however, would not be advised. The particular facts of that case and the harsh collateral effects of the stock award to the husband were what irritated the Court of Appeal and apparently led to the decision to reverse. For instance, Logicon's value more than tripled from the time of trial to the time of appeal. The husband, as an officer, likely knew of that possibility at the time of trial. He was awarded the stock without having to provide the wife any security. He had inside knowledge as to when to eventually purchase her shares at the lowest prices.

Brigden itself discussed potential situations that might not warrant an in-kind division: "Though it is usually possible to divide [stock] in kind, it does not follow that it always can be done without impairment. Were the stock at issue here stock in a close corporation . . . or shown to be essential to Husband's ability to earn a living then economic circumstances would perhaps warrant the award of the entire block of stock to Husband upon conditions effecting a substantially equal division of property."

State of the Law: Family Courts have Great Discretion and the Fight over In-kind Divisions Turn on Whether "Economic Circumstances" Require Alternative Awards.

The same year as *Brigden*, the Court of Appeal issued its opinion in *Marriage of Clark* (1978) 80 Cal.App.3d 417, which had the *opposite* result.

In *Clark*, the family court awarded to the husband all of the shares of capital stock the parties owned in a close corporation. Although the wife wanted half the stock (which itself comprised 50 percent of all the corporation's stock), the husband testified that it would be disastrous to allow her to own any shares because approximately 60-70 percent of the company's work was performed for a government agency that was "very conscious of everybody in the organization." The other business partner testified that he objected to any non-participating minority shareholders, and corroborated the testimony that the customers of the business were very sensitive to any internal conflict in the business.

The Court of Appeal confirmed that ". . . the court has the discretion to award corporate stock in a closely held company where justified by economic circumstances. . . . Here, the court was apparently impressed with the testimony . . . that the principal clients of the business might dislike a change in the stock ownership, and possibly transfer their business elsewhere, and that [the partner] was sincere in his statement that he would close the business if [the wife] was a minority stockholder. Threat or not, [the partner], as a 50 percent stockholder, could legally dissolve [the company], and the trial judge obviously did not want to take a chance that this valuable asset might be dissipated. . . . we cannot say that [the court] abused its discretion . . . as a matter of law."

The following year, in *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 602, the California Supreme Court expressly limited *Brigden* to its "unique facts." It reasoned: ". . . [Section 2550] was intended to, and does, vest in the court considerable discretion in the division of community property in order to assure that an equitable settlement is reached. In particular cases, strict 'in kind' divisions . . . may cause, rather than avoid, financial inequalities. *A spouse with a high income may be able to afford to retain high-risk assets while an unemployed spouse wholly dependent upon spousal support may*

not. By dividing 'in kind' high-risk assets such as the [stock at issue], a court may, for purposes of fairness, divide the risk of loss disproportionately. The exercise of a trial court's sound discretion is best preserved by maintaining a maximum degree of allowable flexibility." (Emphasis added.)

A few years ago I represented the husband in a case where he argued that the wife should have to participate in an in-kind division of the community's 20 percent of the stock in a closely-held corporation. I argued that, without the in-kind division, and the concurrent sale of the former family residence so as to liquidate and equalize the estate, he would be relegated to "second class parent" status, lacking the means to purchase a comparable residence for the children or otherwise maintain a lifestyle equivalent to the wife's. The Court rejected this, however, as it would have caused more disruption to the children due to the sale of their home. The upshot is that the Court could have gone either way in exercising its discretion, and it would still have been upheld on appeal.

Thus, the fight over in-kind divisions turns on whether the "economic circumstances" of any particular case suffice to justify another type of award. This requires hard work in developing and arguing the facts in each case where "the business is the baby."

Greg Herring *is a State Bar certified specialist in family law and is a partner with Ferguson Case Orr Paterson LLP. He is a Board member of the Southern California Chapter of the American Academy of Matrimonial Lawyers and past Chair of the Executive Committee of the State Bar's Family Law Section.*

SURROGATE END-OF-LIFE DECISIONS

By Karen Darnall

"I'm not afraid to die. I just don't want to be there when it happens." - Woody Allen

One of the most rewarding aspects of lawyering is being able to help people face thorny issues. A law office is where clients can discuss unthinkable subjects like incompetency and death. According to recent studies, people feel less comfortable with end-of-life (EOL) discussions than with birds-and-bees talks. Since EOL planning raises issues of mortality and family conflicts, people often seek professional advice to start the conversation.

Can Three Words Change How We Feel About Death?

At a recent Probate and Estate Planning section program, Dr. James Hornstein introduced a new phrase – *Allow Natural Death* (AND). In medical institutions there is a growing trend to use AND terminology instead of DNR, or *Do Not Resuscitate*. AND signifies a desire for comfort care instead of aggressive care, especially for fragile elderly patients.

Physician Orders for Life Sustaining Treatment (POLST) is a new kind of physician's order. Similar to a DNR order, a POLST instruction can authorize nurses and emergency personnel to withhold (or start) cardiopulmonary resuscitation without further doctors' orders.

Similar to a DNR bracelet, the POLST document is durable; printed on heavy card stock (pink). The POLST form is kept near the patient's bedside and is transferred with the patient between home and medical facilities. Unlike a DNR, a POLST document includes multiple orders.

Is Pneumonia The Old Man's Friend?

Dr. Hornstein's presentation caused me to worry about informed consent. Whether I absorbed too much rhetoric against healthcare reform, I don't know, but I am concerned that some people might be encouraged to give up too soon. Should a confused patient with end-stage pneumonia be asked to forego aggressive (costly) antibiotic treatment?

A decision to forego treatment sounds creepy to me. But *non-treatment* of pneumonia would be extremely distressing to a Power of Attorney (POA) agent whose feelings were ignored because the agent was not "reasonably available" to participate in the decision-making process. Prob C § 4635.

Can POLST Actually Bypass The POA Agent's Authority?

Dr. Hornstein explained that POLST documents executed *later in time* have priority. This is true even if a POLST order directly conflicts with the patient's health care POA. To the extent of the conflict, the most recent order or instruction is effective. Prob C § 4781.4.

To learn more about surrogate EOL decisions, I searched for a definition of *legally recognized decisionmaker*. The meaning of this phrase is relevant to anyone who signs a DNR instruction or a POLST form. Finding no definition in the Probate Code, I searched the history of DNR legislation. Apparently in 1994, the Senate Judiciary Committee suggested defining this phrase but, so far, California has no statutory definition.

How Did Surrogate EOL Decisions Evolve?

The general rule for obtaining informed consent from incompetent patients was established in *Cobbs v. Grant* ("[c]onsent is transferred to the patient's legal guardian or closest available relative"). (1972) 8 Cal.3d 229, 244 (emphasis added).

In *Barber v. Superior Court* (1983) 147 Cal. App.3d 1006, a trial court had ruled that two physicians could be prosecuted them for murder after they honored the request of a comatose patient's family to remove the patient's respirator. The decision was reversed on appeal, based on the court's finding that a surrogate's right to refuse treatment for an incompetent superseded any liability that could be attributed to the physicians.

In *Cruzan v. Director, DMH* (1990) 37 U.S. 261, Justice O'Connor recognized the "practical wisdom" of durable health care POA statutes that would specifically authorize surrogate EOL decisions.

In 2000, *California's Health Care Decisions Law* (Prob. C. §§ 4600-5805) made it easier for patients to refuse EOL care through default surrogate statutes. For example, a patient could summarily designate a surrogate *by personally informing the supervising health care provider* and such designation does not revoke the patient's prior health care POA. Prob C §4711.

In 2001, the California Law Revision Commission criticized section 4711 because it bypasses POA-law protections and creates a risk that physicians would follow out-of-date (surrogate) instructions contained in old records. The Commision also proposed a "family consent" statute to help physicians identify surrogates. However, the Legislature rejected that proposal and simply amended the code to limit the surrogate's authority to 60 days.

In 2009, POLST law went into effect.

What Happens To Friendless Patients?

This question was asked by a group of physicians who conducted an EOL study of three thousand patients at hospitals in six different states including California. Among this group, 37 patients lacked decision-making capacity and none of them had written advance directives, agents or surrogates. All 37 patients needed surrogate consent for EOL decisions. A panel of three investigators (physician, lawyer, ethicist) assessed each physician's decisions to limit life support and concluded that – in 30 of 37 cases, physicians made life-support decisions *without* seeking hospital or court review "and did so in a manner that failed to comply with relevant hospital policy, professional society guidelines, and state law." White, DB, *Ann Intern Med*. 2007, 147:34-40.

Can A Patient Designate A Surrogate By Nodding "OK"?

A few years ago, I represented a surrogate decisionmaker who unwittingly accepted caregiving responsibilities. My client's landlord had recently evicted client and another tenant from their home. Co-tenant then suffered a stroke and was admitted to the hospital. Due to brain injury, co-tenant could not communicate verbally but was

able to respond to questions by *nodding* "yes" or "no." Attending physician engaged client in consent discussions at co-tenant's bedside and client (unwisely) accepted discharge instructions despite ongoing eviction proceedings. A search of co-tenant's personal belongings eventually identified the name of a family member who then accepted caregiving responsibilities.

A family member or professional caregiver usually assists a non-communicative patient during medical encounters. In such cases, the physician logically assumes that a trusting relationship exists. Current law does not require physicians to ask whether a written advance directive exists. The physician who signs the patient's orders (whether Rx, DNR or POLST) is the person who ultimately identifies the *legally recognized decisionmaker*.

What is the attorney's role?

Dr. Hornstein suggested that conflicts between POAs and POLST orders could create "a mess." Therefore, attorneys should advise POA agents that they should be "reasonably available" to attend plan-of-care meetings if POLST is on the agenda. It is also important to explain that POLST documents are *only* intended for patients with less-than-one-year life expectancy.

Until such time as the Legislature enacts new laws to clarify the meaning of *legally recognized decisionmaker,* physicians and caregivers should be wary of signing POLST orders if the patient's written advance directive contains inconsistent instructions.

If a dispute cannot be resolved in a reasonable period of time, it may be necessary to appoint a conservator as a last resort.

Karen Darnall *is an attorney who practices health care and civil litigation in Camarillo. She is a member of CITATIONS' editorial board.*

ALERT: FILING PROCEDURE CHANGED

By William Grewe

The Clerk of the Ventura Superior Court implemented a change effective June 21, 2010 to the procedure for filing case-initiating papers, including complaints, petitions and applications.

Under the new procedure, these documents shall be drop-filed. A description of the practice can be found at the court's website under "What's New?" A related memo entitled "Civil Filing Information," addressing common errors, should also be read.

The change follows a persistent hiring freeze and related budget issues.

Members of VCBA and VCTLA met with representatives of the clerk's office to explore alternatives. None were considered workable. The responsibilities of the court clerk are formidable, and with limited resources changes had to be implemented.

The new procedure creates the risk that papers presented timely for filing could be rejected after a statute has run.

The clerk's office has established a "Received-Stamp" mechanism at window 14 so that the drop-off date can be documented. The court clerk will "honor" the drop-off date as the date of filing on all accepted case initiating documents. Documents will not be rejected due to an error on a mandated form such as a Civil Case Cover Sheet. It is unclear whether the absence of such a document would result in rejection.

If a filer is on the cusp of a statute of limitation, the court clerk asks that the filer request the assistance of a supervisor who will immediately address the concern.

Statutes of limitation, while always hard and fast, have also been clear and bright. Like a runner nipping a qualifying time, the filer needed only to reach the courthouse before the statutory cut-off. There is now a slight haze. Attorneys and litigants would be wise to plan for the unexpected. Errors can occur. Documents can be misdated, misdirected, wrongly rejected or lost. A one-week turnaround can swell to several weeks. The immediate concern of a returned, rejected document might not be recognized.

Every case-initiating document should be time-stamped so as to ensure proof of the earliest possible filing date.

Fax-filing presents its own concerns. If an initial pleading is fax-filed, and any one of the documents – whether it be a summons, CMS or Declaration for Court Assignment – contains an error, the entire submission will be rejected.

Other counties have implemented the same procedure. This new reality, even should funding be reinstated, might very well stick until online filing with instant confirmation arrives.

Bill Grewe *is a civil litigator who practices in Oxnard.*

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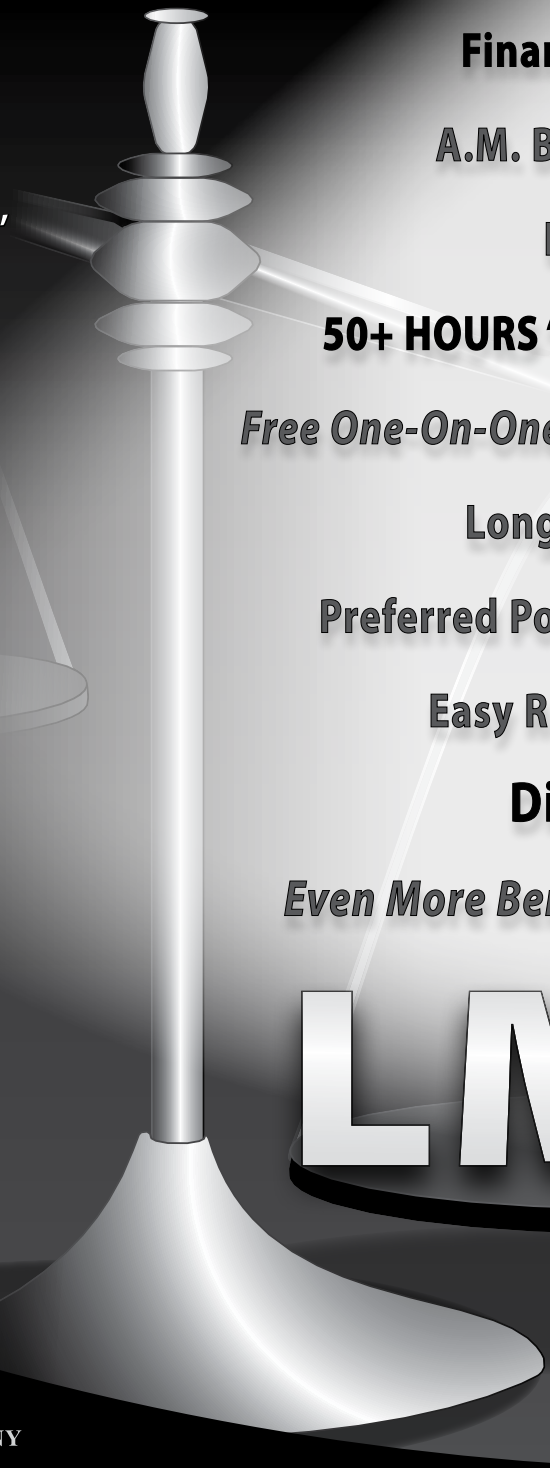

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SMALL CLAIMS COURT, SMALL BUT SIGNIFICANT

By Mark E. Hancock

There is a reason why there are a number of former district attorneys on the bench. The court handles a much greater volume of criminal matters compared to civil matters. In 2007-2008, there were 1,581,117 total civil court filings in the state, compared to 7,793,181 total criminal court filings (According to a 2009 Judicial Council of California Court Statistics Report on Statewide Caseload Trends from 1998-1999 through 2007-2008). That's almost a 5 to 1 ratio. Of those 1,581,117 total civil filings only 184,891 were unlimited cases. Considering the number of people in California, that hardly seems like a litigation explosion.

The largest category for civil filings was limited civil cases (involving $25,000 or less and formerly called Municipal Court cases); there were 680,195 such filings. There were 226,783 small claims court cases. So, the number of small claims court cases is not only a statistically significant percentage of the total number of civil filings (14 percent), but it (at least sometimes) exceeds the number of unlimited civil cases. Here, in other words, is evidence supporting the oft-heard statement that, despite the size of the cases, small claims court is nevertheless important; it very well may be a litigant's only exposure, outside of a contested traffic ticket or two, to the court system.

Judges Pro Tem, who are volunteer lawyers of ten or more years of experience and who have taken certain courses, handle many of these small claims court cases and handle them well. In 2007-2008, for example, statewide there were only 6,230 small claims court appeals (technically "requests for trial de novo"), roughly 3 percent of the total number of small claims court filings.

What Are Small Claims?

The major limitation in small claims court is that the most a person can ask for in damages is $7,500. (Costs are not included within the jurisdictional limit.) Equitable relief is also somewhat limited. In an action to recover money, the court may also grant equitable relief in the form of rescission, restitution, reformation, or specific performance, with the court able to retain jurisdiction until full payment or performance occurs (see CCP § 116.220(b) and CRC, Rule 3.2108), but otherwise, injunctive and other equitable relief is available only when a statute expressly authorizes a small claim court to award such relief (CCP § 116.220(a)(5)). A plaintiff cannot split a cause of action to try to bring two or more small claims cases on that cause of action; the judgment on the first case bars a subsequent proceeding. *Allstate Ins. Co.* v. *Mel Rapton, Inc.* (2000) 77 Cal. App.4th 901, 913-914.

Although collection cases, disputes over security deposits, disputes over car repairs, and small auto collision cases are common, small claims cases can be complex and involved (see, *City & County of San Francisco* v. *Small Claims Court* (1983) 141 Cal. App.3d 470), and excess damages can be waived (CCP § 116.220(d)).

RESOURCES FOR HANDLING THESE CASES

Small claims cases are addressed in Code of Civil Procedure §§116.110 to 116.950. In an action to enforce a debt, "the statement of calculation of liability" shall state the original debt, each payment credited to the debt, each fee and charge added to the debt, each payment credited against those fees and charges, all other debits and charges to the account *and an explanation of the nature of those fees, charges and debits.* §116.222. This helps the defendant and the court address the legality of those fees, charges and debits. Another interesting small claims statute declares that, as to goods and services primarily for personal, family or household purposes, choice of forum clauses establishing a forum outside of California are contrary to public policy, and thus void and unenforceable. CCP § 116.225. Assignees, especially assignees for collection, may not be able to file (or defend) a small claims court action. See, §116.420.

Attorneys advising clients about small claims procedure should know of a manual available on-line: "Small Claims Court: Procedures and Practices," www2.courtinfo.ca.gov/protem/courses/sm_claims.

The courts have also set up a "Self-Help Center" at www.courtinfo.ca.gov/selfhelp/smallclaims/research, which includes advice as to the law relating to the kinds of cases often heard in small claims court cases. For example, it discusses the maximum deposits that can be collected for furnished and unfurnished residential rental units, the right to a pre-move out inspection to identify and give an opportunity to fix deficiencies, the general prohibition against charging/deducting for painting and new carpets, and the ability to make a claim with the Bureau of Automotive Repair with regard to auto repair cases.

The *California Judges Benchbook of Small Claims Court and Consumer Law* published by Thompson West (available to look at from the Court's Commissioners) discusses both small claims court procedural law and substantive landlord tenant and consumer protection law, such as (with some exceptions):

1. No person may file more than two small claims court actions per calendar year in California seeking more than $2,500. CCP § 116.23.

2. Plaintiffs doing business under a FBN must show they have filed and published a FBN Statement before trial, or face dismissal of their case without prejudice. Bus. & Prof. C. §17918 and CCP §116.430.

3. Contractors may not bring an action (for a job for more than $500) without alleging that he or she is licensed. B&P C §§ 7028 and 7031.

4. A home improvement contract must be in writing and signed, with a copy given to the homeowner, before work can be started. B&P C §7159.

5. An automotive repair dealer may not maintain or defend an action for repairs unless the dealer has registered with the Department of Consumer Affairs. B&P C §§ 9884 and 9884.16.

6. An auto repair dealer cannot recover for work without a prior written estimate and customer consent. B&P C § 9884.9.

7. After either party gives notice of intent to terminate a tenancy, the landlord must notify the tenant of his or her option to request an inspection of the premises at a mutually acceptable date and time, with the landlord required to give the tenant an itemized statement (pre move-out) specifying the repairs and/or cleaning proposed to be the basis of security deposit deductions, with the opportunity to the tenant to remedy them. CC § 1950.5.

Locally, approximately 20 lawyers regularly volunteer their time to hear small claims court cases for the court. Those lawyers fulfill a serious and significant role, locally and overall, in the administration of justice in California. Their role and service is sanctioned by CCP § 116.240.

***Mark E. Hancock** is an attorney with offices in Ventura. He handles insurance, personal injury and real estate matters and volunteers as a judge pro tem in small claims court.*

U.S. BANKRUPTCY CODE DOLLAR AMOUNT ADJUSTMENTS - 2010

By Michael R. Sment

In most courts and court systems, precise and exact dollar amounts are significant and required. The pleading or allegation of certain dollar amounts generally provides a basis for a court's original jurisdiction, and often determines the specific procedures to be followed for a particular case (e.g., "unlimited" vs. "limited" actions in California state courts). Dollar amounts in a bankruptcy case context are even more critical. They will determine, among other things, a person's eligibility to file for a Chapter 7 (Liquidation) or a Chapter 13 (Individual Wage Earner Adjustment) case or to elect a Small Business Chapter 11 (Reorganization) case. Certain property exemptions, creditor's rights and allowed creditor claims, among many other rights, restrictions and benefits, are ALL limited by, and to, specific dollar amounts, as set forth in the United States Bankruptcy Code and related federal statutes.

Pursuant to federal law (11 USC §104(a)), dollar amounts listed in, and related to, the United States Bankruptcy Code are periodically adjusted automatically. These required adjustments are intended to "reflect the changes in Consumer Price Index for All Urban Consumers, published by the [U.S.] Department of Labor, for the most recent period ending before January 1."

RECENT ADJUSTMENTS

The most recent such adjustment was scheduled for April 1, 2010 (as published in the Federal Register, Vol. 75, No. 37), and has just been announced by the Judicial Conference of the United States and the Administrative Office of the United States Courts. The increased dollar amounts will apply to any bankruptcy case commenced after April 1, 2010. Some of the important, dollar amount adjustments include the following new amounts:

Chapter 13 Debt Limits: An approximate 7 percent increase over prior Ch. 13 debt limits, bringing the unsecured debt limit to $360,475 and secured debts to $1,081,400

Chapter 12: Family farmer aggregate debts are now limited at $3,792,650, while the aggregate debt limit for family fishermen is now $1,757,475.

Chapter 11: Small businesses now face aggregate debt limits of $2,343,000.

Involuntary Bankruptcy (Ch.7, Ch.11):
Aggregate Amount of Creditor Claims = $14,425.

Priority Claims/Expenses:
Wages/Salaries/Commissions = $11,725

Employee Benefit:
Plan Contributions = $11,725;
Grain Producer/Fisherman = $5,775; Property Deposits = $2,600.

Items Excluded from "Household Goods":
The new total is $600.

Exempt Assets in IRAs:
Aggregate Value = $1,171,650.

Homestead Exemption (federal):
Qualified/State = $146,450.

Exceptions to Discharge (Credit Cards):
70 days before = $875;
90 days before = $600.

Estate Property Exclusions:
Education IRA/tuition credits = $5,850.

Chapter 13 - Disposable Income: Monthly income increase for more than 4 household members: $625/per month for each additional individual.

In addition, seven Official Bankruptcy Forms (1, 6C, 6E, 7, 10, 22A and 22C) and two Director's Forms (200 and 28.3) will be amended to reflect the dollar amount adjustments.

Future U.S. Bankruptcy Code automatic Dollar Amount adjustments can be expected, and are required, for April 1, 2013.

FILING FEES

Current fees for cases and matters in the Central District of California include:

Case/Petitions:
Chapter 7: $299
Chapter 12: $239
Chapter 13: $274
Chapter 11: $1,039.

Case Reopenings:
Chapter 7: $260
Chapter 13: $235
Chapter 11: $1,000
Chapter 12: $200.

Other Fess:
Ammendment Schedule D, E or F, or Master Mailing List: $26

Motions - Compel Abandonment, Term./ Modify Automatic Stay, Reference: $150

Appeals And Cross-Appeals - $255

Complaints (incl. Adversaries) - $250

Records Retrieval from NARA - $45

Exemplifications - $18

Of course, all fees and dollar amounts are subject to further change or adjustment, as required by law, changes in existing law or emergency legislation or rules by Congress, the Judicial Conference, the Administrative Office or the United States Supreme Court. And, as wise counsel has always advised, "Don't forget to check for the current and correct fees when you are actually ready to file."

In these economic times, the qualified professional must expect and stay informed of regular filing fee increases and dollar amount adjustments.

Michael R. Sment *is a member of the CITATIONS editorial board, and Chair of the VCBA's Bankruptcy Section. His offices are in Ventura where he specializes in bankruptcy, real estate and business matters.*

MANDATORY FEE ARBITRATION

By Alejandra Varela-Guerra

The LRIS/Ventura County Bar Association would like to thank all the individuals who have applied to become volunteer arbitrators for the Mandatory Fee Arbitration Program. Your future time and effort is greatly appreciated.

The Mandatory Fee Arbitration Program is a local program through the Ventura County Bar Association that is designed to resolve fee disputes between clients and attorneys without the expense of going through litigation. An arbitrator who is an attorney or a panel of three arbitrators, consisting of two attorneys and one lay arbitrator, are selected to hear and make a determination on the fee arbitration.

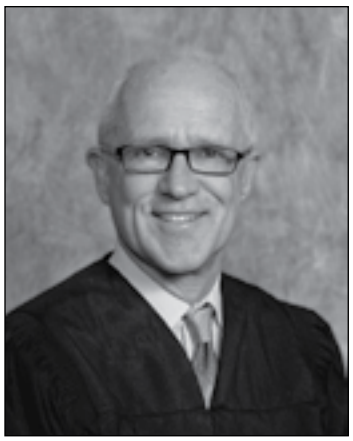
All of the arbitrators participating in the Mandatory Fee Arbitration Program are volunteers.

It is not too late to submit your application to become an arbitrator. If you are interested in becoming a volunteer arbitrator, please contact Alex via e-mail at alex@vcba.org or by calling her at (805)650-7599 ext. 15.

Alejandra Varela-Guerra *is the Client Relations Manager at the Ventura County Bar Association.*

THE HONORABLE DOUG DAILY CHAMPAGNE AND TENNIS EVENT

By Tina Cowdrey



One year ago the Ventura County Bar lost a valued and respected judge, the Hon. Doug Daily, to pancreatic cancer. His wife, Donna Daily, along with Spanish Hills Country Club is honoring his memory by hosting the Second Annual Doug Daily Champagne Breakfast and Tennis Tournament on Labor Day, Monday, September 6, 2010. A champagne breakfast will be served from 8:30 a.m. to 11:30 a.m., with exhibition tennis and a round robin tennis tournament from 9:00 a.m. to 2:00 p.m. Tickets for the champagne breakfast are $35 per person. Breakfast and tennis tickets are $100 per doubles team. Silver, gold, and platinum level sponsorships are available, including reserved center court tables, swag bags, advertisement, banner placement and discounted table and advertising rates for the September 25th Bryan Brothers' Pro-Am Tournament and Exhibition. All proceeds will benefit the Pancreatic Cancer Action Network (PanCAN). Contact Tina Cowdrey at tjcowdrey@aol.com or (805) 218-6263 for more information or to make a donation.

Tina Cowdrey *practices civil litigation in Oxnard.*

CALIFORNIA COURT CASE MANAGEMENT SYSTEM UPDATE

The Judicial Council of California continues to review the California Case Management System as it prepares for final development of the program. Ventura County courts have been a test site for CCMS since 2007.

Final development will combine the functionality already developed with new functionality for family law, juvenile delinquency, and juvenile dependency case categories. The final release will also include statewide reporting, court interpreter and reporter scheduling, and integration with justice partner applications.

CCMS will provide significant advantages to state and local law enforcement agencies, child welfare services, child support services, and all Californians who participate in the court system as litigants, jurors, attorneys, victims, and witnesses.

CCMS will:

- Connect the courts with probation and parole departments, correctional institutions, and law enforcement agencies to provide officers in those entities with up-to-the-minute data about court orders, convictions, probation terms, and sentencing.
- Provide law enforcement officers with current information in their jurisdiction regardless of where the court orders were imposed.
- Provide judges with critical information when they are hearing cases and making decisions about releasing criminal defendants, placing children in foster care or reunifying them with their parents, ordering custody or visitation of children, and issuing protective or restraining orders.
- Save valuable resources currently used to enter data that instead will be updated electronically.
- Provide public access to certain court records across the state regardless of jurisdiction, as permitted by law.
- Allow self-represented litigants greater access to process cases without the assistance of an attorney through Internet and Web-based functionality.
- Decrease the number of vehicle trips to courthouses as a result of electronic access to court data and the e-filing of cases and documents.
- Eliminate the need to print millions of pages of paper because of document management systems, electronic filing, and Internet viewing of court data.
- Reduce the carbon footprint of the judicial branch.

NOMINATIONS SOUGHT FOR WOMEN LAWYERS OF VENTURA COUNTY LEGACY AWARDS

By Jodi Prior

Women Lawyers of Ventura County (WLVC) will present its Legacy Award and Holly Spevak Memorial Award at its fourth annual awards dinner on October 21, 2010. Nominations are now being accepted. WLVC will also be announcing the recipient of the 2010 Mary Sullivan Scholarship.

The Legacy Award honors a pioneer woman attorney, one of our "founding mothers" who was an early leader among women lawyers, a strong supporter of women's rights, an advocate for diversity in the legal profession, and a proponent of advancing the interests of women and girls. Last year, Chief Deputy Public Defender **Jean Farley** received this award for her work as a brilliant, dedicated and fearless trial attorney, handling every type of criminal case from the least serious misdemeanors to the most horrific death penalty cases.

The Holly Spevak Memorial Award honors the memory of a woman whose short time as an attorney brought lasting contributions to the community and access to justice through pro bono work. This award is presented to a new or "newish" attorney who exemplifies the commitment to serve others. The 2009 Holly Spevak Award was given to immigration and civil rights attorney. **Gabriella Navarro-Busch**, for her tireless commitment to assisting battered women and families with their immigration cases. Besides her immigration work, Gabriella also serves as a mentor to young women of color, especially single mothers.

Jean and Gabriella remain an inspiration to us all. But we know there are more outstanding women among us following in their footsteps. Please take the time now to nominate your favorite unsung hero and send it via e-mail to Jodi.Prior@ventura.courts.ca.gov by August 20. Please include a brief description of the reasons why your nominee exemplifies the principles of the Legacy or Holly Spevak Award.

Jodi Prior *is a Senior Court Attorney at the Ventura County Superior Court Self-Help Legal Access Center .*

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Job Opportunities

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Exec's Dot…Dot…Dot…

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

Brian Nomi got the official word in July that the Army promoted him to Lieutenant Colonel… We recently had a case involving the VCBA/VLSP, Inc. and their attempt to locate an attorney by the name of *Samuel Goodwin.* After several days of searching the country for the attorney Goodwin, they found one in Vivian, Louisiana, 71082. **Verna Kagan**, Emeritus Attorney extraordinaire, told Mr. Goodwin that perhaps he was the ONLY Sam Goodwin lawyer in the country. Mr. Goodwin informed us via letter, which after his exhaustive research; he too found he was the only Samuel Goodwin, lawyer, in the USA. Hard to imagine and I would have lost that bet…We still have a few openings remaining for the 2010-2011 J.H.B. Inn of Court campaign beginning September 16 and running through May 12 at the Saticoy CC. Call/email me ASAP…

Dien Le sat in the first row of the special section during the U.S. Supreme Court's last day of the term June 28. Justice Ginsburg was present a day after the death of her husband. Justice Stevens gave a heartfelt farewell speech. Supreme Court Bar members, upon entering the courtroom, were given bowties to wear in honor of Justice Stevens. Waiting in line to get into court, Dien met the attorneys who argued the *McDonald* (2nd Amendment) and *Christian Legal Society* (Hastings College of the Law) cases. Dien.le@calawconsel.com...A six-month suspension has been recommended for an Illinois lawyer who repeatedly criticized a judge, calling him, at one point, a "narcissistic, maniacal mental case" during a telephone conversation with the judge and opposing counsel. Although Melvin Hoffman has practiced for more than 35 years without any prior discipline, he is not a good candidate for probation because he refuses to admit that he was in the wrong and take recommended steps to correct his behavior, says the Review Board of the Illinois Attorney Registration and Disciplinary Commission in a written opinion. Hoffman contended that his constitutional right of free speech allowed him to express his opinion of the judge. Good luck with that…

Barcelona? Greece? **Aris Karakolas** at aris@lascher.con...Quote of the Month: "Law is a mind without reason. I'll return." From Lil Wayne, rapper, in a Twitter post the day he began a twice-delayed yearlong prison sentence on a weapons conviction…LA attorney William L. Taylor died June 28 after more than 50 years being a civil rights advocate. His memoir, *A White Guy Like Me* as in: "What leads a white guy like me to spend his life working on behalf of black people?" Went to Yale Law School and after winning $7,000 on the TV game show called *Tic Tac Dough* in the 50s, he testified before the grand jury when the quiz show scandal broke…

New officers for the Tri-Counties Government Attorneys Association are **Patrick Hehir**, president; **Julie Doi**, vice president; and **Felicia Liberman**, secretary-treasurer. They all started July 1… According to *California Lawyer*, the Greatest Law Review Articles Ever Written: "The Jurisprudence of Yogi Berra," "The Common Law Origins of the Infield Fly Rules," "The Top 10 Politically Correct Law Reviews," "My Pizza With Nino," "The Wrong Stuff," "Lawsuit Shmawsuit," "Legislative And Judicial Dynamism in Arkansas: Poisson v. D'Avril," "Fundamental Principles of American Law," "The Bard And The Bench: An Opinion and Brief-Writer's Guide To Shakespeare," and "A Critique of Judicial Humor"…I cannot remember a non-legal function where all four Court of Appeal Justices were in attendance. But they were spotted together at a 60th BD party July 17…

Carmen Ramírez kicked-off her campaign for the Oxnard City Council with an announcement July 22 at the Oxnard Public Library…Nipped in the bud: A short-lived decision by the U.S. Patent and Trademark Office to create a category for medical marijuana fired up companies seeking protection for their product and business names. Soft drink makers wanted to trademark Canna Cola and Keef Cola, the *Wall Street Journal* reports. Companies sought to protect the names Budtrader and Pot-N. A candy maker hoped to trademark "Bhang, the original cannabis chocolate." After the WSJ report, the category was hastily removed and called a "mistake." For a local spin on medical marijuana, watch Team One of Inns of Court tackle medical marijuana and Prop 19 on September 16. Speaking of IP – The Intellectual Property Section will gather Aug. 12 inside the Plug Nickel in Thousand Oaks. Email your attendance to bar@vcba.org...University of San Diego law student Andrew Jeter had to make a tough decision. Should he go to his tax class, where attendance counts towards the grade, or should he compete in the 2010 World Series of Poker? Jeter made the right choice, at least from a financial standpoint, *TaxProf Blog* reports. He won a little more than $24,000 and finished 568th. Jeter was a student in a class taught by blogger and law professor Paul Caron, whose students are equipped with clickers to record the answers to class room questions. The answers count toward the final grade, placing a premium on classroom attendance…

Lucky **Amber Eisenbrey** eloped July 2 and got herself hitched to Agustin Rodriguez on the beach in Ventura after a trip to Mexico. On hand and barefoot too was her daughter, Alexis. Rumor has it Amber will be changing her last name... Cohen & Slamowitz has only 14 lawyers on staff, but manages to file about 80,000 lawsuits a year. The Woodbury, N.Y. firm files debt collection suits, and it uses computer software to help prepare its cases, the *NYT* reports. It also hires outside lawyers to appear in court on a per diem basis and has on staff 30 to 40 paralegals and secretaries, as well as 60 people trying to collect debts. One software program used by the firm, Collection-Master, can generate collection letters, summonses and lawsuits, according to the story…With 23 years of legal experience, Laurie-Allen Shumaker thought she would soon find another job when she was laid off in January 2009 from her position as a shopping center lawyer. But as of July 19, after applying for over 1,000 jobs – including positions as a clerk and a day care worker – Shumaker, who is nearly *60 years old*, has landed exactly zero interviews, she tells the *Huffington Post.* "Interviews are like seeking unicorns," she tells the blog…

We do not take the month of August lightly. Take advantage of the reduced prices and the NINE CLE courses this month. Check out your *CITATIONS* calendar flyer or www.vcba.org

***Steve Henderson** has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. Prior to his bar experience, he was a PR executive for BP. Additionally, Henderson is no longer a King James fan. Lastly, he may be reached at* steve@vcba.org*, Twitter at stevehendo1, FB, LinkedIn, or preferably 650.7599.*

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