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VENTURA COUNTY BENCH WELCOMES NEW COMMISSIONER JULIA SNYDER

by Rachel Coleman

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PRESIDENT'S MESSAGE

by Douglas K. Goldwater

As a member of the Ventura County Bar Association, have you ever thought, "I wish there was some forum available for me to pose a question that could help me in one of my cases, my practice, etc.?" If so, you are in luck! As part of the Board of Directors' mission to add more benefits to our members, VCBA has established its own ListServe to facilitate communication among its members.

Have you ever wished that you could easily solicit opinions from your local colleagues on a mediator or arbitrator proposed by an opposing counsel? How about when you get that substitution of attorney in the mail and you want to know whether anybody has had prior experience with the new attorney or firm on the other side of the case? What about that novel legal issue that you just cannot seem to find an answer for after spending days on Westlaw? Do you ever have cases in one of our neighboring counties or areas and wish that you could easily get some insight into how the assigned judicial officer runs the courtroom or what the "local, local" rules are? Did you learn some interesting news you believe your colleagues would benefit from you sharing? Well, as a perk of your membership with VCBA, you will now have the ability to easily post a query and receive input from your local colleagues.

To get started, you need to log in to the Membership Directory on our website (www.vcba.org/membership-directory/) and update your top three areas of practice. If you have not established your online account with VCBA, you can easily create it upon accessing the site. Similarly, if you forgot your password, the site has you covered, as does the Bar office, should you need to call in for assistance. The areas of practice that you select in your member profile will automatically add you to the membership of each of the specialized ListServe communities, which includes areas such as employment, family law, intellectual property, estate planning/

probate, criminal law and workers compensation. Because participants must verify their information within the online Membership Directory, you are assured that the ListServe members are active members of VCBA, not advertisers or random Joes requiring your assistance to obtain fortunes in Nigeria. Moreover, only members of a particular ListServe section may send messages to the other members of that section. The protection of our membership is so important that if you try to email from your personal account rather than the one registered with VCBA, the message will be rejected.

The ListServe address for each group will be specialized and look something like: "vcba_familylaw@intustalk.com." Using this address protects the privacy of the individual members of each section, so that participants cannot gain access to the e-mail addresses being used by each participant in the group. Messages sent via the ListServe should be brief, in good taste and contain information aimed for the benefit of the group. Since hitting "reply" to a message will send communications to the entire group, if you want to take the conversation "off-line," you should forward the thread to the individual member with whom you

want to continue the discussion privately. Messages should **not** contain attachments, advertising, political commentary or notices of meetings or events (other than events held by the Court or VCBA, including its sections).

The VCBA ListServe will go live in April. Upon updating your practice areas on the VCBA website, you will receive a welcome message for each of the associated section ListServes. Although we trust that you will enjoy this new perk and find it useful for your practice, if, for some reason, you choose not to benefit from it, then the welcome e-mail will also provide instructions to unsubscribe.

Since your VCBA Board is committed to developing enhancements to your membership benefits, we welcome your ideas. Please look at the list of our Board members on Page 4 of this issue and do not hesitate to reach out to any of us with your input.

Doug K. Goldwater is a partner at Ferguson Case Orr Paterson, LLP. His practice focuses on family law. He can be reached at (805) 659-6800 or at dgoldwater@fcoplaw.com.

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BANKRUPTCY AFTER FORECLOSURE?

by William E. Winfield

In a case of local interest, the California Supreme Court recently held that a foreclosure purchaser cannot serve a three-day notice to quit on a commercial tenant until the foreclosure trustee's deed is recorded, despite a statute providing that the sale is "deemed perfected" on the sale date if the deed is recorded within fifteen days. (*Dr. Leevil, LLC, vs. Westlake Health Care Center* (2018) 6 Cal.5th 474.)

This case started with a local nursing home operated by a small corporation, Westlake Heath Care Center, which leased space from a corporate landlord that was controlled by the same shareholders. The landlord borrowed money against the property; the loan was secured by a deed of trust. The landlord defaulted, and the lender assigned the deed of trust to Dr. Leevil, LLC, which foreclosed. Dr. Leevil was also the successful bidder at the trustee's sale.

Dr. Leevil served a 3-day notice the day after the sale, relying on Civil Code section 2924h(c), which provides that a trustee's sale is deemed final on the actual date of the

sale as long as the trustee's deed is recorded within fifteen days.

Westlake Health did not vacate. Forty days later, when Dr. Leevil brought an unlawful detainer action in Ventura Superior Court, **Judge O'Neil** ruled that the notice to quit was valid.

Westlake Heath appealed, arguing that the three-day notice was premature. The Court of Appeal (Tangeman, J.) affirmed. The Supreme Court granted review and reversed the Court of Appeal, holding that a landlord may not serve a notice to quit until it has **perfected** title by actually recording the trustee's deed. "Deemed perfection" is not sufficient.

This ruling allows tenants to prolong an eviction after foreclosure by filing for bankruptcy relief during the gap between the trustee's sale and recordation of the trustee's deed. This could give debtors more time to occupy the property while the new owner seeks relief from the bankruptcy stay, and in turn gives debtor tenants greater

leverage to negotiate terms to remain on the property or take longer to move.

One author has suggested that this is the kind of delay and uncertainty the Legislature intended to prevent when it adopted Civil Code section 2914h in 1992. (See Schecter, CLA Business Law Section, *Insolvency Law Committee Bulletin*, March 5, 2019.) Until the Legislature again acts, this ruling will create a gap period of uncertainty that can be exploited for further delay through bankruptcy filings.



William E. Winfield recently joined Nelson, Comis, Kettle & Kinney LLP as a partner. Winfield is board certified in Business Bankruptcy by the American Board of Certification. He practices in commercial litigation and bankruptcy. wwinfield@calattys.com



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VENTURA COUNTY BENCH WELCOMES NEW COMMISSIONER JULIA SNYDER

by Rachel Coleman

On Jan. 7, **Julia Snyder**, one of Ventura County Superior Court's newest commissioners, was sworn in. For those who do not know her, since April 1999, she worked in the Ventura County District Attorney's Office. During her time with the DA's Office, Snyder conducted trials and worked on all types of cases including general felonies, general misdemeanors, juvenile, fish and game, auto insurance fraud, DUI/vehicular homicides, narcotics, gangs, elder/dependent abuse, domestic violence and sexual assault.

Snyder graduated from Brigham Young University, and earned her law degree from Southwestern Law School. She took a year off from college for an opportunity to teach public speaking classes at BYU before attending law school.

Prior to eighth grade, Snyder wanted to be an orthopedic surgeon. In eighth grade, Ms. Crawford, who taught Snyder's eighth grade honors English class, held debates. It was then Snyder realized she wanted to be a justice of the Supreme Court, but her eighth-grade brain recognized she would first need to become an attorney. After some reflection, she decided she really wanted to be a prosecutor.

Snyder felt fortunate and blessed that, when she graduated from high school, she knew exactly in what direction her studies would take her. She did not need to flounder wondering about her future like many of her classmates did. As soon as she was eligible, she applied for internships. Prior to becoming a prosecutor in Ventura County, Snyder clerked for the Los Angeles County District Attorney's Office. Immediately after she graduated law school, Snyder was hired by the Ventura County DA's Office.

Snyder spends the majority of her spare time going to the movies, swimming at the beach or going to Big Bear with her three children. She took piano lessons for nine years and plays old musicals and classical

pieces on the piano for fun. She is also finishing a Master's degree in Administrative Leadership at the University of Oklahoma, graduating this May.

For sixteen years, Snyder coached a Mock Trial team from Westlake High School. She also sits as a judge for the Mock Trial Program and regularly participates in her children's many activities at school, including sitting on the Boosters Board.

Snyder grew up in Westlake Village. At her swearing in ceremony, she was surrounded by her family, friends, colleagues from the District Attorneys' Office, defense attorneys, judges and court staff. Snyder reported she felt lucky to be supported by so many people in her local community.

If you would like to hear a few bars of Singing in the Rain played on the piano, Commissioner Snyder can be found at the Simi Valley Courthouse on Mondays and Tuesdays in Dept. S1, where she handles small claims and traffic trials. Wednesdays through Fridays, she handles adult and juvenile traffic trials, juvenile infraction arraignments, juvenile low-level arraignments and contests, and guardianship trials in Dept. J5 at the Juvenile Justice Center in Oxnard.



Rachel Coleman
practices civil defense litigation at Beach Cowdrey Jenkins LLP in Oxnard, CA. She is a long-time member of CITATIONS' editorial board.

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WHAT LAWYERS NEED TO KNOW ABOUT IMMIGRATION LAW

by Kathleen J. Smith

Attorneys who practice immigration law tend to devote their practices either to employment and investor-based cases or to humanitarian and family-based matters. Both realms are governed by the same federal law, the Immigration and Nationality Act (“INA”) (8 U.S.C.A. § 1101, et seq.). Most practitioners, regardless of their primary client base, tend to agree that the current law serves neither our national interest nor our moral obligations as a beacon to the world of inclusivity and opportunity.

The struggles that newcomers have integrating and securing their immigration status and rights in this nation has long been a fraught discussion. Many people have opinions, but few actually know what they are talking about. Very few people understand the ramifications of seemingly simple terminology: walls, amnesty, asylum.

In Ventura County, with an economy heavily reliant on immigrant labor (biotech, fieldwork, restaurants and hotels), attorneys are frequently confronted with clients’ questions about the immigration law consequences of decisions from accepting a criminal plea to hiring new college grads under the Deferred Action for Childhood Arrivals program (“DACA”).

CITATIONS recently took a moment to sit with one of the country’s highly informed immigration advocates, **Vanessa Frank**, to learn some immigration basics.

Q: Is it legal for an unemployed foreign national to immigrate to the U.S. to apply for a job—e.g., can they go to the border and say they’d like to apply for a farming job in Oxnard? What if the foreign national has been offered a U.S. job?

“Going to the border” would not be the way to do it. A person should already have a visa in hand by the time they get to the border or board a plane to the U.S. But yes, our immigration system does make employment-based visas available on a temporary or a permanent basis.

The first question is whether the employer is able to prove that there is no U.S. citizen

or lawful permanent resident – “green card” holder – able to do this job. If the employer can demonstrate that a particular position in their company requires certain skills, training or ability, and no qualified candidate emerges when such a position is offered to the public at the “prevailing wage” determined by the U.S. Department of Labor, then the company can apply for a visa for a particular worker from another country.

This system makes it difficult to offer most entry-level and service industry jobs to foreign nationals, as such work, if offered at a fair wage, would usually attract local workers. Furthermore, this visa application process can be arduous, slow and expensive, which skews the incentives against filing such petitions, even for work with no U.S. worker applicants (e.g., harvesting produce).

Q: Is an asylum applicant free to accept employment in the U.S. while their asylum application is pending?

Yes. Once an application has been pending for more than 150 days, the asylum applicant may apply for work authorization, and may receive authorization no sooner than 30 days after that. This process is governed by the INA as well as policy memoranda issued by the Executive Office of Immigration Review within the Department of Homeland Security.

Q: Is the employer expected to discover the applicant’s immigration status prior to making a job offer, and if so, how?

The 1986 Immigration Reform and Control Act (“IRCA”, more commonly referred to as the “Amnesty Law”), struck a deal: In exchange for granting lawful status to thousands of workers, going forward each employee in the country would need to complete immigration Form I-9, demonstrating they were U.S. citizens, green card holders, or had been granted work authorization by U.S. immigration authorities.

The Amnesty Law also made it illegal for employers to discriminate against employees on the basis of immigration status or

perceived status. Employers are caught in a bind. The best advice is to NOT ask an applicant for their immigration status, but only whether they would be authorized to work in the United States if they were to be offered a position. Upon accepting an offer of employment, each worker must then complete Form I-9.

Q: Is E-Verify the only way an employer can legally hire an immigrant?

No, E-Verify is a voluntary government program that takes information from an employee’s Form I-9 and compares it with Department of Homeland Security and Social Security records to confirm employment eligibility. In accord with IRCA, the employer’s obligation is to maintain a completed Form I-9 by the employee’s third day of work.

E-Verify is roundly criticized because the system could disqualify potential workers on the basis of a name mismatch or other minor discrepancies in records maintained across government agencies. E-Verify imposes a burdensome process on job candidates to ensure that all their identity documents exactly match one another. The system also raises serious privacy concerns.

Q: Are there legal penalties if an employer hires an undocumented worker?

Yes, the burden is on U.S. employers to not hire unauthorized workers (INA § 274A, 8 U.S.C. § 1324a). Failure to comply is generally a civil offense, with criminal penalties imposed when a pattern or practice of violations is established. Penalties include fines, debarment from federal contracts and in the case of criminal liability, imprisonment.

Q: If the employer uses E-Verify, is this a defense to a charge of hiring an undocumented immigrant?

Yes. The E-Verify system will inform an employer if there is a “mismatch” or “no match” between the information provided and the documentation. The employer is then obligated to inform the employee and offer the employee an opportunity to correct errors. E-Verify is not the only

defense to a charge of unlawful hiring, however. The law allows for a reasonable person standard in reviewing employment eligibility documents.

Q: If there is a backlog of cases in immigration court, may the immigrant change jobs in the U.S. while they wait for their case to be decided?

Yes, being in removal proceedings (“deportation”) imposes no particular requirements related to employment (unless, of course, the individual in proceedings is also detained in immigration jail). Among the many ironies and hypocrisies of the immigration system, being in removal proceedings is often the first time an individual qualifies for employment authorization. Current backlogs mean that the vast majority of removal cases are taking three to seven years to resolve, during which time the individual is free to continue working here.

Q: Does an immigration judge have to make rulings consistent with the President’s position on restricting immigration?

Immigration judges are not Article III federal judges. They are civil servants in the employ of the Department of Justice, supervised by the Executive Office of Immigration Review. The Department of Justice is administered by the Attorney General, who serves at the pleasure of the President. Thus, ultimately, immigration judges must adhere to the policies governing immigration law.

But just as with any U.S. civil servant, they must perform their duties in accordance with the laws and regulations governing their position. They cannot simply implement the President’s “position on restricting immigration.” Besides, immigration judges do not decide most immigration cases. They only decide the cases of people who are placed into removal, or deportation, proceedings. Most immigrants’ cases are decided by Citizenship and Immigration Services officers.

Q: What outcomes have we seen in the cases of minors and toddlers “representing” themselves in immigration courts? Have their claims been decided yet and if so, what disposition was there?

Those cases have largely been lost, since toddlers and children are often unable to present effective defenses. Those children are then repatriated to their countries of origin. While those in removal proceedings have a right to bring an attorney, there are no “public defenders” in immigration courts or at the appeals level. Each person must either pay legal fees or secure a pro bono lawyer to present their case. In the past ten years, over 575,000 minors have been placed into deportation proceedings. Of these, 52 percent have not had a lawyer at all. Of those without representation, 66 percent lost their cases and were ordered removed and repatriated to their original countries of origin.

Q: Is due process violated when the government makes a child represent themselves in asylum proceedings?

Yes. In what way can you claim that a child, especially a toddler or an infant, is aware of their rights and able to mount a legal argument? It’s hard to say which part of our current immigration law is most immoral – indefinite detention in for-profit prisons with no opportunity for bond hearings? Decades-long separations of

family-members? – but certainly enforcing dire consequences upon children without a lawyer or guardian to represent them is among the top five shameful outcomes of our current system. That said, our high courts are currently struggling to confront this injustice. In 2018, the Ninth Circuit twice refused to find a due process violation in such cases. In *CJLG v. Sessions*, a minor and his mother were fleeing gang violence in Honduras. Thus, it was not a purely “unaccompanied minor” case. *JEFM v. Lynch* was rejected on jurisdictional grounds, but that case continues to be litigated and may end with a different result. The laws in this area are not realistic in today’s world of easier long-distance travel, greater mobility of capital and increasingly wide gaps among the world’s wealthy and the world’s poor. The INA did not envision indefinitely incarcerating people in for-profit prisons. The Act was not designed to forcibly remove up to half a million individuals each year. The Act was not written to account for unaccompanied minors, or children at all.

Q: If CITATIONS readers want to help immigrants or refugees, what are their options?

Continued on page 10

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Continued from page 9

This conversation has been wide ranging, from employer liability to representation of minors in removal and asylum proceedings. From Ventura County it may feel hard to effectuate any meaningful change. However, one of the projects I am most proud to be involved with right now is Swap Meet Immigrant Legal Aid.

On the last Sunday of each month, I and several of my colleagues provide training and support to all sorts of volunteers – teenagers, clergy, teachers and other attorneys – to provide direct legal services to folks right there on the spot at the Oxnard College Swap Meet from 8-3 p.m. We have been helping people to apply for U.S. citizenship, renew their green cards or DACA status, and also registering citizens to vote and all young men for Selective Service. Ventura County Legal Aid is one of the organizations supporting this effort. We encourage attorneys who would like the chance to work one-on-one and make a difference in a particular family's life to come out to the Swap Meet and meet some people – don't worry about learning the INA, we'll train you right there on Sunday morning!

There are also ongoing efforts to get our lawmakers to fund representation to those facing removal proceedings (the Government is ALWAYS represented by counsel!) and to go to the border to provide legal and humanitarian aid to those in such desperate situations. Our office works closely with advocates around the nation, so please call us to get involved!



*Vanessa Frank earned both her J.D. and her AB degree in Public Policy at Stanford. She was recently awarded the **Verna Kagan Service Award**.*



***Kathi Smith** is a litigator at Schneiders & Associates LLP, and a member of CITATIONS editorial board.*

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THE YOUNG & CONFLICTED RADIO SHOW – IOC TEAM 6

Jerome H. Berenson Inn of Court Team 6, helmed by Master **Judge David Long (Ret.)**, presented a CLE radio play, “The Young and Conflicted; These are the Days of Their Lives” with the assistance of KCLU public radio sound engineer and special guest, Andy Vasoyan (see picture). The complete radio play may be found here: <https://www.kclu.org/node/69701>. The written CLE materials are located here: <https://tinyurl.com/yxism2pf>. Contact the bar for self-study ethics CLE options on this program.

Team 7 presents, “Pitchess Motions,” their program on April 11.

You may join the IOC via the bar’s webpage at VCBA.org or at (805) 650-7599. IOC-curious? Non-members may always attend as guests, plus Saticoy Country Club will complete its renovation of the bar lounge on April 3 in time for the program. We’ve been going strong since 1994.



Left to right: Maureen Houska, Constance Zarkowski, Special Guest Andy Vasoyan, Judge David Long (Ret.), Carolyn Phillips, Larry Dushkes, John Contos, Danielle St. Clair, Kata Kim, Kevin Flahavan and Tommy Gallardo.



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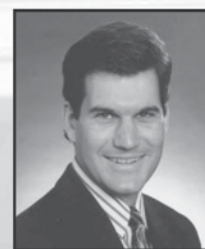
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VENTURA COUNTY HIGH SCHOOL MOCK TRIAL 2019

by Matt Bromund



Working long into the night is nothing new for lawyers. But for high schoolers pretending to be lawyers, witnesses and other courthouse denizens, this year's mock trial competition was full of new experiences. Twenty-two local high schools fielded 30 teams to argue over the guilt or innocence of fictional college student Reagan Klein, accused of making a criminal threat on a social media website and then making a false police report of a hostage situation. A responding SWAT team seriously injured Klein's former friend.

For most of a school year, hundreds of high schoolers worked with dozens of Ventura County attorneys to learn about courtroom advocacy. Criminal defense attorney **Kristi Peariso** was able to watch her daughter, Kennedy, compete in the same courtrooms where Peariso has tried cases for years. From the bench of her own courtroom, **Judge Ronda J. McKaig** shared her experience in this competition. **Deborah Meyer-Morris** was one of many scoring attorneys laboring long into the night to evaluate competitors on their presentations and performances in the competition organized by **Judge Gilbert A. Romero**.

Each team has at least one lawyer from the Public Defender's office or private practice teaching and training students; some high schools have four or five. The bench and bar's involvement makes Ventura County's high school mock trial competition one of the most realistic and pragmatic educational exercises in the state. Although the fact scenario is closed and the rules of evidence are simplified, the level of expectation is equal to that of any Superior Court trial. Many of the mock trials saw current bench officers presiding in the same manner and with the same focus as during actual trials and hearings. If the career paths of past competitors are any guide, in about ten years we can expect to be joined at the bar by several lawyers who competed as students in this year's mock trial competition. Winning the local competition for the second year in a row, and winning a berth in the statewide mock trial competition, was Trinity Pacific. This private school has made storytelling in the mock trial a priority. Saint Bonaventure was the runner-up, with polish and professionalism their key to success. Santa Susana came in third through a combination of outstanding witness performances and cutting evidentiary objections. The sportsmanship of the Fillmore squad was recognized as

outstanding and the team spirit of Grace Brethren was truly impressive.

This year was the 37th competition in Ventura County and the results over the years have been surprisingly consistent. La Reina High has the most county championships (20 out of the 37), with four state titles and several national championships as well. Only three public schools have ever won the county competition: Camarillo in 2003 and 2016, Newbury Park in 2009, and Oxnard in 2010.

Author's Note:

I started Vanderbilt's Mock Trial team in 1998 (with fellow Ventura/Santa Barbara attorney **Ian Morse**) and scored high school competitions in San Diego while I was in the Navy JAG Corps. When I came to Ventura County, I was a scorer for three years before the opportunity came to coach at Oxnard High School. Other attorneys at my firm, as well as Deputy District Attorneys and Deputy Public Defenders, help coach Oxnard's students both to present a mock trial and to aspire to higher education and legal careers. And my own evidence and advocacy skills have been sharpened by the questions and insights of

HAVE YOU HEARD?

these teenagers. I cannot cite any MCLE I have attended as effective at improving my legal abilities as coaching mock trial.

Mock trial, in a very real way, recruits the lawyers of the future. That fact makes the dominance of private schools in this competition an area for reflection and consideration. Schools that place well tend to have one or more of these advantages: an assigned class for mock trial, a stable of attorney coaches who are committed throughout the year; parental support for the program; an appreciation that scoring attorneys are volunteers who are assigning scores at the end of long days at work; and a focus on applying the competition rules as lawyers would.

If you aren't involved, get involved; there is no more fun way to energize your own growth as an attorney while brightening the legal future of our community. If you have the chance, encourage the VC Office of Education (which runs the competition) to shift it to weekends, because keeping high schoolers out till 11 p.m. or later on school nights is problematic, and all the lawyers involved are pretty wiped out the following days as well. Consider whether our competition is as fair as it can be to all the students involved, because any perception of unfairness will discourage confidence in a process.

If you didn't make it to any of this competition, you really missed out. Admission was free and the chance to see the future, now, was priceless.



***Matt Bromund** is the Principal Attorney for the Bromund Law Group, APC. The firm handles cases of criminal defense, immigration law, and family law. Matt is a member of the VCBA and chairs the Immigration Law Section as well as the Veteran's Legal Clinic. He has two grown daughters, lives in Ventura, and is a graduate of Marshall University and Vanderbilt University School of Law.*

Welcome new Ventura Port District Commissioner Jackie Gardina! Gardina, Dean and Chief Academic Officer of the Santa Barbara & Ventura Colleges of Law (@collegesoflaw), was confirmed by Ventura City Council on Mar. 4, with her first VPD meeting on Mar. 20 at 7:30 p.m.



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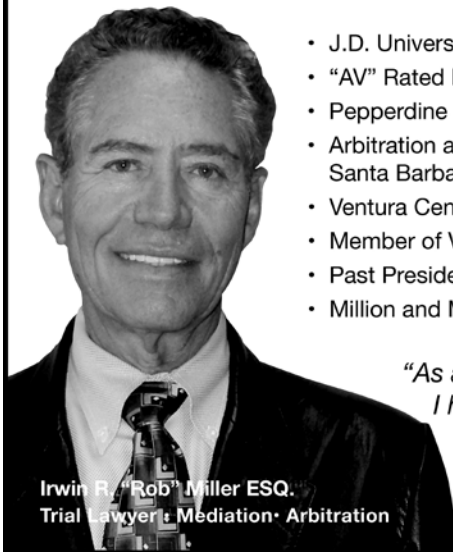
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NEW LAW PERMITS FAMILY COURTS TO CONSIDER PET WELFARE IN DIVORCE: HAVE WE ENTERED THE ERA OF “PET CUSTODY?”

by Claudia Silverman, CFLS



Pets are surely doing a happy dance because California courts are now, for the first time, permitted to consider the care of pets upon dissolution of marriage under newly enacted Family Code section 2605 (added Stats 2018 ch 820 §1 (AB 2274).

The law was supported by the American Society for the Prevention of Cruelty to Animals, the San Diego Humane Society and the San Francisco SPCA. California now joins Alaska and Illinois in acknowledging that the interests of family pets may be considered in dividing community property.

Prior Law

Until now, courts have not had the statutory authority to consider the care of a beloved pet in divorce, and there was no direct legal basis for a court to consider which party would better care for a pet animal, or order that a party properly care for a pet. There does not appear to be any prior case holding that a spouse's fiduciary duty to the other spouse extended to care of a family pet. Absent stipulation or monumental judicial creativity, courts would not order joint ownership of an animal. They considered

pets personal property to be valued and included in the inventory of personal property. Courts seldom made specific orders for the assignment of a pet to a party, absent agreement. They did not, and realistically could not, consider the revered status of pets in the family constellation, nor the needs of those pets.

As a practical matter, this meant that parties were forced to attempt to agree to their own arrangements for pet “custody,” either through simple persuasion or the exchange of funds. Sometimes parties have made arrangements for split custody, but on numerous occasions, sadness and bitterness resulted from the failure of our divorce law to consider the welfare of an animal, even though existing law recognizes the special status of animals in society, as well as rights and welfare of animals. (E.g., *Martinez v. Robledo* (2012) 210 Cal.App. 4th 384 (pet owner may recover reasonable and necessary costs for injury to a pet, even exceeding its market value); see also the Domestic Violence Protection Act (Fam. Code, § 6320, subd. (b)), permitting protective orders to extend to the care of an animal; Pen. Code, § 597, making animal cruelty a felony.)

The New Law

Fast forward to 2019. New Family Code section 2605 provides that, at the request of a party, the court may enter interim and final orders assigning “sole or joint ownership of a pet animal taking into consideration the care of the pet animal.”

Under the new law, “care” of an animal includes prevention of acts of harm or cruelty as described in Penal Code section 597, and provision of food, water, veterinary care, and safe and protected shelter.

The new law defines “pet animal” as any animal that is community property and kept as a household pet. According to the legislative history, animals kept for commercial use, such as livestock or race horses acquired as community property for investment or profit, would not be considered household pets and would not be subject to the new law.

Importantly, the law does not change the characterization of pets as property: “This bill does not change pets’ characterization as property. It simply creates uniform rules to assist parties and courts in determining what happens when couples divorce.” (Assembly Judiciary Committee analysis, April 5, 2018.)

Because section 2605 allows the court to assign joint ownership, if the parents are awarded joint physical custody of a child, the court may order that the pet travel back and forth to the home of the custodial parent. While perhaps unintended, the allowance for joint ownership could be monumentally consequential for children of divorce, who may be permitted to spend continuous time with a beloved pet. In the past, by contrast, a family pet awarded to one parent could give that parent an unfair advantage in custody, as the child may wish to spend more time with a parent based on that parent’s ownership of the family pet.

Litigation Under the New Law

What does this mean for our practice in family court? What evidence may be introduced as to “the care of the pet animal,” and as to the issue of which of the divorcing parties is best equipped to care for the pet?

As any family law practitioner knows, in child custody litigation, the seminal question is, “What is in the best interests of the child?” The new statute does not use this language; however, good care of the animal would be in the animal’s best interest. The comparison is inescapable. Depending on the facts, a party might introduce evidence, for example, that he or she has:

- Engaged in dog training or obedience school with the pet;
- Been the main caregiver for the pet, including walking, feeding, grooming and providing for veterinary care;
- Demonstrated greater love and affection toward the pet;
- Developed a strong bond with the pet, such that separation would cause harm to the pet.

And, of course, a party could introduce evidence that he or she has more time or resources to properly care for the pet. This would be particularly important in the care of a pet with special medical needs.

In child custody matters, the courts and practitioners may use expert testimony from psychologists, physicians and educators. Is it far-fetched to wonder whether such tools would be available in cases involving pet “custody?”

According to the International Association of Animal Behavior Consultants, dogs may suffer separation anxiety when separated from their owners, resulting in “destructiveness, inappropriate elimination and vocalization, as well as physiological and affective distress.” Would an animal behavior expert be permitted to testify regarding “canine separation anxiety” in a divorce case?

One concern raised by opponents of the bill was that family courts are already backlogged and that this new provision could result in more delay. The family law bar should take this concern into account and not permit this provision to be “the tail wagging the dog.” With this sensibility

in mind, the provision permitting courts to consider the care of our sentient furry friends is certainly a paw print in the right direction.



Claudia Silverman is of counsel at Zonder Family Law Group, and a Certified Family Law Specialist (State Bar Board of Legal Specialization). She has been practicing family law in California since 1989. Zonder Family Law Group is a Westlake Village boutique family law firm. Using a team approach, ZFLG is “Settlement Minded, Ready for Trial!”

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FROM THE PROBATE SECTION: MORE CHANGES AND UPDATES FOR OUR PROBATE COURT

by Amber Rodriguez

Judge Roger L. Lund has asked that I share the following information regarding evidentiary hearings, mediation procedures and other issues for J6, our Probate Court:

Due to our recent internal workload reorganization, I am pleased to announce that effective February 25, 2019, all evidentiary hearings and trials in J6 will be set on Mondays only (all day). The court will no longer set hearings on Thursday or Friday afternoons. This should allow for more contested probate and conservatorship cases to be heard in the probate courtroom.

The workload reorganization is also intended to minimize continuances by publishing tentative rulings several days in advance of a hearing with the hope that deficiencies will be addressed by supplemental filings prior to or at the hearing.

Effective immediately, judges pro tem will no longer be able to set trials or evidentiary hearings in J6 or a civil courtroom.

The Court will continue its longstanding case management protocols in contested

cases by staying formal discovery, encouraging informal discovery that might be helpful for settlement, and sending most cases to mediation before any trial or evidentiary hearing is set. A post-mediation status conference will continue to be set to triage the case after mediation.

Attorneys are encouraged to implement mediation as early as possible in the life of a contested case to conserve both family and court resources to the greatest extent possible. At present, **Judge Kellegrew** has consented to hear one probate MSC per month in Department 22, which at this time will generally be reserved to a case with little or no money for private mediation and will be assigned by the J6 judge. The Court (J6) has made itself available to conduct MSCs in appropriate cases. All other cases should be prepared for private mediation. Although the Court will determine the payment of private mediator fees on a case by case basis, generally, the cost of the mediation will be borne by the trust or estate, subject to reallocation by the court.

On a side note, I have recently seen tentative rulings issued as early as four or five days prior to the scheduled hearing. It is hard to break the habit of only checking the day before the hearing, but it certainly pays to check sooner if a supplement is necessary to address the court's concerns.

I hope this information is helpful and allows you to more effectively assist your clients. If you have a particular issue that needs to be addressed, please let me know.



Amber Rodriguez is the Chair of the Executive Committee for the Estate Planning and Probate section of VCBA. Her practice focuses on probate and trust litigation and administration, estate planning and conservatorships. She can be reached at arodriguez@estateattorneycalifornia.com, or you can visit her website at estateattorneycalifornia.com.

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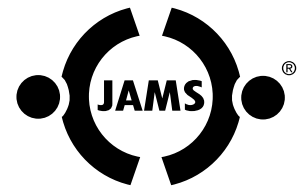


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THE WALL: TO BUILD, OR NOT TO BUILD, THAT IS THE QUESTION

by Lindsay F. Nielson



Remember “Shovel Ready” projects in the early years of the Obama administration? In an effort to jump start the economy that was faltering following the 2008 economic collapse, Congress and the President allocated hundreds of millions (with an “m,” not a “b”) of dollars to pour into construction projects all over America.

The only problem was, there isn’t such a thing as shovel ready. Anyone with the least bit of experience in the way the laws require pre-construction things to occur, knows that the process usually takes years of planning, design and engineering, environmental assessments including endangered species considerations, real estate appraisals and right of way land acquisitions.

The Constitution’s Fifth Amendment (yes that famous one that everyone takes when they get into hot water) also requires “*Nor shall private property be taken for public purposes without just compensation.*” Unless the federal government already owns the land that the wall will cross separating the USA from Mexico, it will have to acquire it from private citizens. Although the feds can obtain title to the property they will need, it will require environmental assessments appraisals and then, if the land owner disagrees with the government’s offer of just compensation, they can take the question of the amount of compensation they have been offered to a federal court, where a jury will determine what the government must pay them for their property.

I was the Department of Justice’s appraisal expert when Vandenberg Air Force Base was going into a polar launch facility for spy satellites in the late 1980s. Vandenberg is the only place in the continental United States where launching a missile into polar orbit does not cross over land. The engineers, however, decided that if a missile had to be

destroyed in the early minutes of its launch, with the prevailing winds, it would fall on the 25,000 acre Bixby Ranch. Bixby Ranch had six miles of ocean frontage. My appraisal took the better part of one year. It required that I go to the Pentagon to help craft the restrictive easement that would prevent development within one-half mile of the ocean frontage. The process from beginning to end (prior to my involvement) to the time the government got its property rights was approximately four years.

Will the Wall be quicker? What about wildlife that doesn’t care about international boundaries. Will there have to be openings in the wall to allow migration for antelope? I once traveled to China in 1986 with a group of US attorneys. We visited the Great Wall. One colleague commented, as we surveyed this incredible structure, “Well, it’s a good wall, but I wouldn’t call it a great wall.” I doubt the President’s wall will be built as he thinks.

Lindsay F. Nielson is a lawyer and receiver. You can contact him at nielsonlaw@aol.com



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CITATIONS

Ventura County Bar Association
4475 Market Street, Suite B
Ventura, CA 93003



ACTUAL:	3/10/19	10 POINTS	ARIYA MAIRE LOVE	POINTS	50	GIRL	10 POINTS	19.5	10 POINTS	6.6	20 POINTS	
CONTESTANT	DATE		NAME			GENDER		HEIGHT		WEIGHT		TOTAL
NANCY AYERS	3/12/19	8	SOPHIE			GIRL	10	20.5	9	7.1	9	36
DEBORAH MEYER-MORRIS	3/17/19	3	CASSIDY			GIRL	10	20.5	9	7.4	6	28
ELANO CUZZO	3/31/19	0	LIANA			GIRL	10	22	7.5	7	10	27.5
DEBI JURGENSEN	3/31/19	0	REYNOLDS			BOY	0	20.5	9	6.10	16	25
KELSEY GONZALES	3/31/19	0	KELSEY			GIRL	10	19.2	9.5	7.6	4	23.5
WENDY LASCHER	3/28/19	0	YSIDORA			GIRL	10	20	9.5	7.13	0	19.5
MARIA PORCHE	3/31/19	0	NATALIE			GIRL	10	N/G	0	7.5	5	15
MEGHAN CLARK	N/G	0	AINSLEY			GIRL	10	N/G	0	N/G	0	10

OUR BEAUTIFUL ARIYA MAIRE LOVE LEHR CAME ABOUT A MONTH EARLY ON SUNDAY, MARCH 10TH AT 6:20 P.M.! SHE CAME OUT **VERY** LOUD (LIKE HER FATHER) AND SPENT A COUPLE DAYS IN THE NICU. JEN AND ARIYA ARE BOTH HOME AND DOING WELL!



We appreciate your criminal law referrals!

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