California Lawyers Association

presents

Recent Developments in Trusts and Estates

1.25 Hours MCLE; Legal Specialization in Estate Planning, Trust and Probate

Thursday, September 21, 2023

1:30 PM - 2:45 PM

Speakers:

Vivian L. Thoreen

Patrick A. Kohlmann

Conference Reference Materials

The California Lawyers Association is an approved State Bar of California MCLE provider.

2022-2023 RECENT DEVELOPMENTS IN TRUSTS AND ESTATES

Presented By:
Patrick A. Kohlmann, Esq. – San Jose, CA & Danville, CA
Vivian L. Thoreen, Esq. – San Francisco, CA & Los Angeles, CA

September 21, 2023, 1:30 pm - 2:45 pm

CALIFORNIA LAWYERS ASSOCIATION

2023
SAN DIEGO / SEPTEMBER 21- 23
ANNUAL MEETING
BREAKING BARRIERS
CALIFORNIA LAWYERS ASSOCIATION
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A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS

Selected cases of interest to trust and estate attorneys published between May 15, 2022, and June 1, 2023.

1. COVID Emergency Tolling Rules Revisited (VLT)

PEOPLE v. FIN. CA. & SUR. (2022) 78 Cal.App.5th 879 [May 16, 2022]

A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS

2. Q's Rule: Never Trust the Client; Probate Code Section 15642 Interpreted Much More Broadly Than One May Expect, Imposing Personal Liability Over and Above Beneficiary's Share Of Trust (PAK)

BRUNO v. HOPKINS (2022) 79 Cal.App.5th 801 [June 13, 2022; Rehearing denied July 6, 2022; Review denied August 31, 2022]

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3. Caveat Emptor: "Let The Buyer Beware"; But In This Case, As It Applies To An 80-Year-Old Elder-Buyer, Caveat Venditor: "Let The Seller Beware" (VLT)

MUNOZ v. PATEL (2022) 81 Cal.App.5th 761 [July 28, 2022]

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4. A Brief – Okay, Maybe Not-So-Brief – Primer On Malicious Prosecution (VLT)

MALETI v. WICKERS (2022) 82 Cal.App.5th 181 [August 15, 2022; as modified on denial of rehearing September 9, 2022; review denied November 22, 2022]

A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS

5. An Great Example Of The Policy Underlying The Elder Abuse Act To Incentivize Attorneys To Undertake Financial Elder Abuse Claims (VLT)

CAMERON v. LAS ORCHIDIAS PROPS. (2022) 82 Cal.App.5th 481 [August 22, 2022]

A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS

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NOTICE: THE SUPREME COURT OF CALIFORNIA HAS GRANTED REVIEW IN THIS MATTER

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Selected legislation of importance to trust and estate attorneys chaptered between May 15 2022, and July 1, 2023.

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5. SB 1338: Community Assistance, Recovery, and Empowerment (CARE) Court Program (Related to AB 2830)

B. CALIFORNIA LEGISLATION OF IMPORTANCE TO PROBATE, TRUST AND CONSERVATORSHIP MATTERS

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B. CALIFORNIA LEGISLATION OF IMPORTANCE TO PROBATE, TRUST AND CONSERVATORSHIP MATTERS

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9. AB 1726: Address confidentiality program

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10. SB 1279: Guardian ad litem appointment

B. CALIFORNIA LEGISLATION OF IMPORTANCE TO PROBATE, TRUST AND CONSERVATORSHIP MATTERS

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B. CALIFORNIA LEGISLATION OF IMPORTANCE TO PROBATE, TRUST AND CONSERVATORSHIP MATTERS

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Thank you!

2022-2023 RECENT DEVELOPMENTS

CALIFORNIA LAWYERS ASSOCIATION

Presented By:
Patrick A. Kohlmann, Esq. – San Jose, CA & Danville, CA
Vivian L. Thoreen, Esq. – San Francisco, CA & Los Angeles, CA

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A. RECENT CALIFORNIA CASE LAW DEVELOPMENTS (PLANNING, ADMINISTRATION, PROPERTY TAX, AND CONSERVATORSHIPS), LEGISLATION, AND "TAX" AUTHORITIES

Selected authorities and cases of interest to trust and estate attorneys published between May 16, 2022 and June 30, 2023, *not covered in prior CLA Recent Developments Programs*.

1. COVID Emergency Tolling Rules Revisited (VLT)

PEOPLE v. FINANCIAL CASUALTY & SURETY, INC. (2022) 78 Cal.App.5th 879 [May 16, 2022]

Short Summary: Surety provided a $100,000 bail bond for criminal defendant Vanessa Anderson in March 2019. Anderson failed to appear in court on May 17, 2019, and the court ordered the bail forfeited. The clerk mailed notice of forfeiture to Surety on May 23, 2019, informing Surety it could file a motion to set aside the forfeiture within the appearance period (i.e., 185 days). Surety motioned for a 180-day extension, thereby extending appearance period to June 10, 2020. Emergency Rule 9 was adopted April 6, 2020, and later amended May 29, 2020.

The applicable appearance period terminated on June 11, 2020, and Surety failed to either produce Anderson or demonstrate circumstances warranting application of any recognized excuse. The court subsequently entered summary judgment against Surety which then filed a motion under Code of Civil Procedure section 473, subd. (b), claiming a judicial emergency and excusable mistake due to Governor Newsom's shelter-in-place COVID order frustrating its ability to produce Anderson. The court denied Surety's motion. Surety appealed.

The Court of Appeal affirmed. In so doing, it reviewed Emergency rule 9, which was adopted by the Judicial Council and became effective on April 6, 2020, and amended on May 29, 2020. Emergency rule 9, as amended, read: ". . . the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020."

The appellate court cited to the Advisory Committee comment explaining the application of the rule: "Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action" including "causes of action in court found in codes other than the Code of Civil Procedure, including the limitations on causes of action found in, for example, the Family Code and Probate Code." The Court further cited the Circulating Order in concluding that the intended scope of Emergency rule 9 plainly focuses on the initiation of civil proceedings. Finally, the Court agreed with a Fourth District observation that a motion to vacate a bail forfeiture is not a pleading that commences a cause of action of special proceeding. Instead, it is a

motion ancillary to ongoing proceedings so the appearance period is not a statute of limitations subject to tolling under Emergency rule 9.

2. Q's Rule: Never Trust The Client; Probate Code Section 15642 Interpreted Much More Broadly Than One May Expect, Imposing Personal Liability Over And Above Beneficiary's Share Of Trust (PAK)

BRUNO v. HOPKINS (2022) 79 Cal.App.5th 801 [June 13, 2022; rehearing denied July 6, 2022; review denied August 31, 2022]

Short Summary: Mildred was married to James for 67 years. Together they had four daughters, Gail, Lynne, Jane, and Gwen. Between 1989 and 1991, James and Mildred created an estate plan. James, an attorney, with the assistance of various of his staff, drafted the trust. He handwrote portions of it, and then had various staff type those sections. The final document consisted of 31 pages. The date the trust was created was handwritten on the first page, and Mildred and James signed the last page, as did the notary who witnessed their signatures.

Under the terms of the trust, upon the death of the first spouse, half of the trust assets were to be allocated to a revocable surviving spouse's trust, and the other half of the assets were to be placed in an irrevocable marital trust and an irrevocable family trust. At the second death, the trust specified that Lynne and Gail would each receive $200,000 from the revocable surviving spouse's trust, with the remaining assets to be divided equally between Jane and Gwen, after other specified distributions were made.

James was hospitalized in 2006 after suffering a stroke. Lynne and Gail returned to the family home in California upon learning of James's hospitalization. While staying at her parents' home, Lynne alleged that she found one of her father's estate planning documents in an unlocked metal box in the kitchen. She "perused" the document, but did not recall the title of the document, the number of pages, or whether she saw James's signature on the document. Lynne testified that she saw her mother's and sisters' names, and noted that the document indicated the four children would receive equal shares of their father's estate.

Following James death, Mildred deferred sending a copy of the trust terms to the remainder beneficiaries. Lynne filed a petition to compel production of the trust, and Mildred provided the terms before the court could order her to do so.

The trust of course did not provide for equal shares for the children. Mildred testified that at the time she and James prepared the trust, the $200,000 gifts to Lynne and Gail represented about half of the trust assets. Mildred stated she and Francis were concerned because Lynne and Gail did not have careers and would thus benefit from receiving a designated amount of money, while Jane and Gwen could rely on their own "lucrative careers" for financial stability. Mildred noted that

Jane and Gwen would not have fared well had she and James passed away shortly after creating the estate plan.

After receiving the terms of the trust, but before her retained handwriting expert had reviewed the document, Lynne amended her petition, adding causes of action to remove Mildred as the trustee, and to declare the trust instrument a forgery, among other bases for relief.

Lynne called forensic document examiners Cunningham, Moore, and Flynn, as expert witnesses at trial. Unfortunately for her, the trial court questioned the expertise and credibility of both Cunningham and Moore. The trial court found that the fact Cunningham placed several of the pages of the trust into plastic protective sheets and communicated to other experts his belief that the evidence contained therein was significant constituted a "[veiled] attempt to influence the other experts."

The court found no merit to Lynne's experts' theory that the pages of the trust instrument were replaced, artificially aged or otherwise tampered with. Rather, the trial court found credible Mildred's testimony that James used different typists to assist in preparing the documents, and thus found it reasonable that the different typists would use different paper, font, and toner. The court entered judgment against Lynne.

Following the entry of judgment, Respondents filed a motion for attorney's fees in which Mildred asked for $331,274, and Jane and Gwen asked for $497,763, asserting that Lynne had filed her petition to remove Mildred as trustee in bad faith. Respondents brought the motion under the court's "broad" equitable powers, as well as Probate Code section 15642, subd. (d). The court determined Lynne's "litigation was a personal attack on her mother and her sisters by filing her lawsuit because she thought she should receive more of her parents' estate upon her mother's passing." While the trial court did not specifically address Probate Code section 15642, subd. (d), it did award fees and costs.

Lynne appealed.

Probate Code section 15642 authorizes the removal of a trustee upon the petition of a settlor, cotrustee, or beneficiary, where the trustee has committed a breach of a trust, among other specified grounds. If the court finds that the petition for removal of the trustee was filed in bad faith and that removal would be contrary to the settlor's intent, the court may order that the person or persons seeking the removal of the trustee bear *all or any part of the costs of the proceeding, including reasonable attorney's fees*. (Prob. Code, § 15642, subd. (d).) On its face, the ordinary meaning of the phrase "all or any part of the costs of the proceeding, including reasonable attorney's fees" suggests that the Legislature intended to authorize attorneys' fees without limiting the amount to the moving party's interest in the trust at issue. The only limitation is that the attorneys' fees be reasonable.

Here, there was no support for Lynne's claims that the trust had been forged, aged or substituted. The trial court determined that Lynne had not seen an estate planning document equally dividing the estate amongst the four sisters, despite her testimony to the contrary.

Lynne filed her amended petition seeking to remove Mildred as trustee before any of her experts had viewed the original trust documents, from which the trial court could infer that Lynne had indicated to one or more of them that she had seen an alternate version of the trust.

Simply put, the trial court found Lynne was not credible and had fabricated the existence of a trust document with terms more favorable to herself. The existence of this document was the underlying premise for the forgery claim. Thus, it is fair to say that "something about the state of the evidence" rendered Lynne's reliance on her experts' opinions unreasonable.

The fee award was affirmed.

Comment: The concerns of relying solely on a client's representations is nothing new. Jim Quillinan, a retired colleague of mine, was known for saying "never trust your client" during his years of practice. Although somewhat satire, it may be prudent to be skeptical of a client's story, engage in limited due diligence, and gather some supporting facts, before filing a lawsuit. Here, the initial sole reliance on the client's version of events, and the inability to turn up reliable evidence to support it, not only resulted in judgment against Lynne, but a significant fee award of fees and costs against her to the favor of the other side.

Second, this is the second recent case holding that the court has the equitable power to award fees against a beneficiary. Here, the court of appeal affirmed the trial court, finding that Probate Code section 15642(d) was specifically designed to prevent the costs of bad faith challenges from being borne by trusts, and the only reasonable interpretation of the statute is that it was written to include the imposition of personal liability on a person who seeks to remove a trustee in bad faith by requiring the person to pay all or any costs of the proceeding.

This is big a step beyond the recent case of *Pizarro v. Reynoso* (2017) 10 Cal.App.5th 172. In *Pizarro*, the appellate court confirmed that the trial court's equitable power over trusts gives the court authority to charge attorney fees and costs against a beneficiary's share of the trust estate if the beneficiary instigated an unfounded proceeding against the trust in bad faith. However, it concluded the trial court exceeded its equitable powers when it imposed personal liability for attorney fees and costs on a beneficiary over and above the funds available from their share of the trust proceeds. The court in *Bruno* had no problem going there.

Expect litigators to pursue fees accordingly whenever a beneficiary goes after a trustee and the trustee believes the petition was filed in bad faith and without merit.

3. Caveat Emptor: "Let The Buyer Beware"; But In This Case, As It Applies To An 80-Year-Old Elder-Buyer, Caveat Venditor: "Let The Seller Beware" (VLT)

MUNOZ v. PATEL (2022) 81 Cal.App.5th 761 [July 28, 2022]

Short Summary: Luis Munoz and his company LR Munoz Real Estate Holdings, LLC ("Munoz") bought a hotel for $2.835 million from a company owned and managed by Rajesh Patel and Shivam Patel (the "Patels"). Before escrow closed on the property, the parties negotiated a leaseback arrangement requiring Munoz to lease the hotel back to the Patels' company (PL Hotel Group, LLC) after the sale.

After escrow closed, Munoz executed what he believed to be the previously-negotiated lease. According to Munoz, the Patels swapped out the previously agreed-upon lease for a different one, which benefitted the Patels to the detriment of Munoz.

Additionally, the Patels positioned themselves as Munoz's secured lenders for the hotel transaction, and created a private lending company called "Inn Lending." This (alter-ego) lender relationship was not disclosed to Munoz. The Patels' plan was for Munoz to default on the loan he took out to buy the hotel, which would then enable them—as security interest holders—to foreclose on Munoz's properties.

After these issues came to light, Munoz filed a complaint alleging various causes of action against the Patels and their lending entity, including breach of contract, breach of the covenant of good faith and fair dealing, promissory fraud, and elder financial abuse. The Patels demurred to the complaint, which the trial court sustained without leave to amend, and Munoz appealed the subsequent judgment.

The Court of Appeal found that the trial court properly dismissed Munoz's breach of contract and bad faith causes of actions, and the fraud claim against Inn Lending. But the Court found the trial court erroneously dismissed the fraud claim against Rajesh Patel. Munoz alleged facts sufficient to state a "fraud in the execution" of the lease against Rajesh based on Rajesh's substitution of the lease and his related concealment of the swapped leases.

Moreover, regarding Munoz's financial elder abuse claims, pled pursuant to Welfare and Institutions Code sections 15610.30 and 15657.6 (the latter of which governs the return of property taken from elders who lack capacity or are of unsound mind), the Court agreed that Section 15657.6 does not apply because the complaint did not allege that Munoz lacked capacity. However, the Court did find that Munoz's financial elder abuse claim was sufficiently pled to withstand a demurrer: Munoz was 80 years old and the Patels received Munoz's property for a

wrongful use and/or with fraudulent intent (i.e., the complaint incorporated the allegations of fraud in the execution, the lease swap, the alter ego relationship between the Patels and Inn Lending, and the concealment of this relationship).

The Court of Appeal reversed the judgment of dismissal as to the causes of action for financial elder abuse and fraud against Rajesh.

4. A Brief – Okay, Maybe Not-So-Brief – Primer On Malicious Prosecution (VLT)

MALETI v. WICKERS (2022) 82 Cal.App.5th 181 [August 15, 2022; as modified on denial of rehearing September 9, 2022; review denied November 22, 2022]

Short Summary: Andrew Farkas owned property in Santa Cruz County, Parcel 5 and Parcel 18. After his death in 2013, his widow Collette McLaughlin filed a probate petition to establish and enforce an access easement consisting of a dirt road cutting through adjacent properties. The initial and amended petitions named several neighboring landowners as respondents. The fourth amended petition added nine claims against Sal Maleti and Maleti Corp. (the "Maletis"), who had sold Decedent Parcel 18 in 1993, but who hadn't held an interest in any nearby property for since 2000. By means of demurrers and a motion for summary judgment, all of Collette's claims against the Maletis were eventually dismissed.

Sal Maleti died, and his executor, Carol Maleti ("Carol") sued Collette and her attorneys, Rodney and Christina Wickers (collectively "Attorneys") for malicious prosecution and abuse of process. Attorneys filed an anti-SLAPP motion, which resulted in the trial court striking Carol's abuse of process claim but also denying Attorneys' request for attorney's fees. The trial court denied the anti-SLAPP motion to strike the malicious prosecution action, concluding that Carol had shown a probability of succeeding on that claim. Attorneys appealed the court's failure to strike the malicious prosecution claim and denial of their request for attorney's fees. Carol cross-appealed the striking of her abuse of process claim.

Analysis of Appellate Court:

1. Malicious prosecution claims require termination of the underlying action reflecting on their substantive merit (procedural grounds are not enough). However, this requirement is satisfied where, as occurred here, at least one of multiple terminated claims was terminated for substantive reasons.
2. Malicious prosecution claims require a prima facie showing of an absence of probable cause in the underlying case. Carol met this requirement by showing that Collette pursued claims despite knowing that the Maletis did not hold interests adverse to Collette's title. This showing has an objective standard, so Attorneys' subjective belief was irrelevant.
3. Malicious prosecution claims require a prima facie showing of malice. Malice can be inferred from a lack of probable cause in the underlying action, and continued pursuit of an action after becoming aware of that lack. But lack of probable cause alone is not enough to establish malice, although continued

pursuit, plus Attorneys' harassing actions were enough to support Carol's claim.

4. Due process claims involve the abuse of tools afforded to litigants engaged in a lawsuit. Collette's filing was deficient because it only alleged improper filing and prosecution.
5. The trial court properly granted the motion to strike the abuse of process claim and properly denied the motion to strike the malicious prosecution claim.
6. But the trial court improperly denied Attorneys' request for attorney's fees because CCP § 425.16(c)(1) entitles a prevailing defendant to recover attorney's fees and costs. Prevailing partially is enough to recover proportional fees and costs, if the benefits of winning were not "so insignificant that the party did not achieve any practical benefit from bringing the motion." Narrowing the litigation by eliminating a cause of action constitutes a practical benefit.

Takeaways:

- Termination of at least one claim on substantive grounds is required to proceed on a malicious prosecution claim.
- The determination of whether there was an absence of probable cause for a malicious prosecution claim uses an objective standard, so the subjective beliefs of the defendant are not relevant to that element.
- Malice can be inferred from a lack of probable cause, but cannot be found solely on that basis. A knowing pursuit of claims lacking probable cause can be used to support a finding of malice.

5. An Great Example Of The Policy Underlying The Elder Abuse Act To Incentivize Attorneys To Undertake Financial Elder Abuse Claims (VLT)

CAMERON v. LAS ORCHIDIAS PROPERTIES, LLC (2022) 82 Cal.App.5th 481 [August 22, 2022]

Short Summary: Erin Cameron (an elderly woman) lived in a 9-unit, rent-controlled apartment complex, Las Orchidias, for over 50 years. LOP purchased the property in 2003 and in or around 2005, LOP approached Cameron in her unit, with a large dog, saying "I want your unit." Cameron refused her give up her lease, even for the $25,000 LOP offered her. In 2015, LOP filed a notice of intent to withdraw units from the rental market in accordance with the Ellis Act. LOP then sent a letter to Cameron notifying her that she could extend her lease one year under the Ellis Act and that if the unit was put back on the rental market within five years, she would have a right to re-rent under the Los Angeles Municipal Code ("LAMC") sections 151.23 and 151.27. Cameron vacated her home in 2016.

In 2019, LOP notified the Community Investment Department of its intention to place the unit back on the market. Cameron notified LOP that she wanted to re-

rent the unit, but LOP's attorney sent another letter saying that LOP "has decided not to offer the unit to you at his time. In accordance with Government Code Section 7060.2(b)(2), enclosed please find a check for the sum of . . . six months[']rent."

From 2015 to 2019, LOP allowed another person (Henry) to live in the units, including Cameron's old unit, in exchange for his managerial services rather than paying rent. Also during this time, Cameron was paying $800/mth more for rent elsewhere and had to pay $274/mth for storage as her new unit was much smaller.

The trial court found that LOP violated Cameron's rights under both the Ellis Act and LAMC section 151.27 by refusing to re-rent the unit to her. The trial court also found LOP liable for financial elder abuse under Welf. & Inst. Code section 15610.30. Further, the trial court found that when LOP allowed Henry to stay in the unit, they were renting to him in violation of LAMC and Ellis Act, both of which require that LOP first offer to re-rent the unit to Cameron. The trial court awarded Cameron $68,948.10 in economic damages, $250,000 in noneconomic damages for emotional distress, and $250,000 in punitive damages, and awarded her attorneys fees and costs.

LOP filed a motion for a new trial which the trial court denied. LOP's motion for new trial was based on their claim that the complaint was not well-pled regarding (1) the wrongful eviction based on LOP's denial to allow Cameron to re-rent the unit; (2) that LOP offered to rent the unit to someone else (i.e., Henry); and (3) that LOP intended to defraud Cameron with their 2018 letter in which they refused to re-rent to her. These are all fact-heavy issues and as the Court of Appeal explained in its analysis, LOP failed to timely object to the complaint and never objected to these factual matters when evidence of each was raised, and litigated, at trial.

Analysis of Appellate Court:

- Though it is true that a party must recover on the cause of action alleged in the complaint, rather than another cause of action disclosed by evidence, this "general rule may yield where a case is tried on the theory that a matter is in issue and evidence is received thereon without objection."

- In this case, the facts seemed undisputed and LOP, by its own testimony, admitted to writing Cameron both letters: the first letter where they told her about her right to re-rent under LAMC section 157 and the 2018 letter where, after she tried to exercise that right, they refused and also admitted to allowing Henry to stay in the unit in exchange for his managerial services.

- The Court of Appeal found that the 2018 letter showed that LOP knowingly violated code sections and took advantage of Cameron, as they worded the letter in a way that implied that they were allowed to decline Cameron the opportunity to re-rent and that their offering of six months' rent was all she was entitled to.

The Court of Appeal upheld the trial court's judgment, order denying motion for new trial, and order awarding Cameron attorney's fees.

6. Probate Code Section 1516.5 – Requirements To Terminate Parental Rights (PAK)

IN RE E.L. (2022) 82 Cal.App.5th 597 [August 23, 2022; as modified on denial of rehearing September 16, 2022; review granted November 30, 2022]

NOTICE: THE SUPREME COURT OF CALIFORNIA HAS GRANTED REVIEW IN THIS MATTER

Short Summary: This decision followed the appeal of an order terminating parental rights of both parents pursuant to Probate Code section 1516.5.

Section 1516.5, subd. (a) provides:

"A proceeding to have a child declared free from the custody and control of one or both parents may be brought . . . in an adoption action, or in a separate action filed for that purpose, if all of the following requirements are satisfied:
(1) One or both parents do not have the legal custody of the child.
(2) The child has been in the physical custody of the guardian for a period of not less than two years.
(3) The court finds that the child would benefit from being adopted by his or her guardian. In making this determination, the court shall consider all factors relating to the best interest of the child, including, but not limited to, the nature and extent of the relationship between all of the following:
    (A) The child and the birth parent.
    (B) The child and the guardian, including family members of the guardian.
    (C) The child and any siblings or half siblings."

Section 1516.5, subd. (a) requires the court to consider "all factors relating to the best interest of the child," including the circumstances leading to guardianship, the parent's efforts to maintain contact with the child, any exigencies that might hamper those efforts, and other evidence of commitment to parental responsibilities.

The Court of Appeal affirmed the termination. The trial court's order as to the father was supported by substantial evidence. The father pointed to no evidence that would compel the trial court to conclude his relationship with his children, to the extent such a relationship existed, was more important than providing a stable and nurturing home with the children's guardian through adoption. It was the guardian, not the father, who had been a parent to the children for more than five years.

Moving to the mother, she sought to reopen the matter because she did not testify at the hearings. However, the court noted that the mother had abruptly left the

courtroom at one hearing, and that the mother's counsel explained that she left because she "had to catch an earlier bus." The appellate court found the trial court did not abuse its discretion in denying the mother's request to reopen the evidence to allow her to testify, as remand would unnecessarily delay the likelihood of adoption of the children.

7. Administrators Must Reside In The United States For Entirety Of Probate (PAK)

ESTATE OF EL WARDANI (2022) 82 Cal.App.5th 870 [August 31, 2022]

Short Summary: Here, the decedent's wife sold her home in California and moved with the decedent to Mexico in 2014, intending to retire there. The wife remained in Mexico "full time" up and through the decedent's death. However, based on her representation that she was a California resident, the wife was appointed as administrator of the decedent's probate estate.

Over a year later, pursuant to a San Diego County Local Rule, her letters of administration expired. The wife filed a status report and request for extension of her letters of administration. The decedent's daughter objected, on the grounds that the wife was not a U.S. resident.

The trial court agreed. Although she returned to California for visits, and alleged she intended to relocate to the U.S. after the probate was over, at all times during the probate she had not relocated to the U.S. On these facts, the court found that she was not a U.S. resident within the meaning of Section 8402.

The appellate court affirmed.

Probate Code section 8402, subd. (a)(4) requires an administrator at all times to have *actual residence*, rather than a temporary or transitory presence, in the United States. Despite any stated intent to return, a person is ineligible to serve as administrator who leaves the United States and sets up a residence abroad intending to remain indefinitely. Taking this analysis one step further, where a person does not actually live in the United States, the person's connections to the country cannot alone establish residency.

Comment: Even though the wife had a California driver's license, paid state and federal income taxes, and had doctors, bank accounts, attorneys and accountants in California, that did not establish actual residency. The Probate Code requires one to be an actual resident of the United States, and this requirement is to be strictly construed.

8. The Rule Against Restraints On Alienation, The Rule Against Perpetuities, And Protecting The Public (PAK)

TUFELD CORP. v. BEVERLY HILLS GATEWAY, L.P. (2022) 86 Cal.App.5th 12 [December 7, 2022; rehearing denied December 27, 2022]

Short Summary: Pursuant to a ground lease, Tufeld rented prime commercial real property in Beverly Hills to two tenants. The lease term was for 98 years ending in 2058.

In 2003, the tenants sold their interest in the ground lease to BHG. In 2007, Tufeld and BHG amended the lease and reset the expiration of the term to 2123, which was 65 years after the original termination date.

After experiencing remorse, Tufeld sought to get out of the extension by canceling the lease amendment on the basis that the 99-year term limit per Civil Code section 718 had been violated.

The court concluded that BHG's acquisition of the lease in 2003 constituted a novation and that the lease term thus ended in 2102. The court further found the lease to be void under Section 718 to the extent its term exceeds 99 years. In light of this determination, the court concluded that BHG could not maintain its estoppel, laches, and waiver defenses.

The Court of Appeal affirmed in part, reversed in part, and remanded. The lease's extension beyond 99 years was void rather than voidable because the protection afforded by Section 718 benefits the public and thus is not within the private benefit exception to the rule that a law cannot be contravened by a private agreement (Civil Code section 3513). The lease was void only as to the period exceeding 99 years because the lease's central purpose of renting property was lawful, allowing for severance of the illegal provision.

So, what should be taken from this decision? First, a novation (the substitution of a new obligation for an existing one) occurs if a new tenant is substituted for an old one and the parties intend to release the old tenant of all obligations. If a landlord agrees to such novation in advance by allowing the tenant to assign “all of its right, title and interest” in the lease to a third party, novation occurs, and amounts to a new contract which supplants the original agreement. So, the assignment reset the maximum term limit to 2102.

Second, the 99-year limit derives from the rule against restraints on alienation. Of interest to trusts and estates attorneys is the origination of the rule against perpetuities and the rule against restraints on alienation. Both were part of the common law of England before being codified in California. Both were meant to protect the public from indefinite dead-hand control of property (noting the public policy against “tying up of property for an undue length of time”). Just as the rule

against perpetuities does not per se make a trust which may exceed that term void, but instead operates to void that trust once the term limit is reached, the rule against restraints on alienation does not void the lease itself, but voids the term exceeding the permitted limit.

The protection afforded by Section 718 benefits the public and thus is not within the private benefit exception to the rule that a law cannot be contravened by a private agreement (Civil Code section 3513). The lease was void only as to the period exceeding 99 years because the lease's central purpose of renting property was lawful, allowing for severance of the illegal provision.

Comment: In *Lucas v. Hamm* (1961) 56 Cal.2d 583, the California Supreme Court held that while plaintiffs could pursue a tort action for negligent drafting of a will which had an invalid rule against perpetuities clause, the drafter was not liable because even well-informed lawyers may make such errors. Could that theory work here?

Furthermore, it is not only the term that can cause problems; a tenant's indefinite right to renew a lease violates the rule against restraints on alienation.

9. Are You My Father? The Uniform Parentage Act, Presumed Children, And Intestacy Implications (PAK)

WEHSENER v. JERNIGAN (2022) 86 Cal.App.5th 1311 [December 28, 2022]

Short Summary: When Judy was two years old, her biological father dropped her off at Charles' home, and asked Charles to babysit. The father never returned. The child continued to live with Charles, initially in his Kentucky home, and then in Indiana. Charles publicly held her out as "his child" but did not legally adopt her.

Years later, after Charles had died, his relative died intestate while domiciled in San Diego.

The decedent's cousin alleged she (the cousin) was his only intestate heir. Judy learned of the probate and objected. Judy alleged she should inherit through Charles, as his presumed child, under the Uniform Parentage Act, and share the estate with the cousin. The cousin argued that under Indiana law, there was no legally recognized parental relationship with Charles because Judy was neither Charles' biological child nor legally adopted by him.

The trial court ruled against the cousin, and the appellate court affirmed.

What are the rules?

1. California law applies to determine parentage when a person claims to be an heir of an intestate decedent who was domiciled in California when he or she

died, even if, as in the instant case, the parent and child relationship was effectuated outside California.
2. Under Family Code section 6453(a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act (UPA) and not rebutted.
3. Under the UPA, a person is presumed the natural parent of a child if the "presumed parent receives the child into their home and openly holds out the child as their natural child." (Fam. Code, § 7611, subd. (d).)
4. The presumption created under Fam. Code section 7611 of the UPA "affect[s] the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence." (Fam. Code, § 7612, subd. (a).)
5. Indiana law is irrelevant; the cousin did not present evidence that would be considered clear and convincing.

Comment: So, how did Judy find out about the probate? From an heir finder service. She had never lived in California, and had never met the decedent. Lucky days. . . .

10. Probate Code Section 15800; The "Empty Chair Issue" (PAK)

STARR v. ASHBROOK (2023) 87 Cal.App.5th 999 [January 3, 2023; as modified on denial of rehearing January 26, 2023; review denied April 12, 2023]

Short Summary: At the time of this decision, Arnold, the settlor of the subject revocable trust, was 90 years old. Arnold's three children were Jonathan, David, and Noah. His neighbor and friend was Ashbrook. And his former student, with whom he had a romantic relationship, was Steele.

About five years after the beginning of Arnold's relationship with Steele, she filed a lawsuit against Arnold for injuries arising out of an automobile accident. Son Jonathan believed Arnold needed to protect himself, and arranged for Arnold to meet with estate planning attorney no. 1, who amended Arnold's trust to name Jonathan the acting trustee.

Steele discovered this and told neighbor Ashbrook that Arnold had been "wronged." Steele also told Arnold's nephew and Arnold's friends that Jonathan and/or the other children had committed crimes against Arnold.

Then, Arnold terminated estate planning attorney no. 1, hired attorney no. 2, and then replaced that attorney with attorney no. 3, who restated the trust, removing Jonathan as trustee, appointing the nephew as trustee, and designating Ashbrook as trust protector.

Ashbrook, unhappy with the nephew, as trust protector engaged in a series of actions ending up with him as trustee. During these events Arnold's capacity was diminishing. Arnold then hired two new estate planning attorneys, nos. 5 and 6.

Ashbrook, as trustee, sought to have a note purportedly handwritten by Arnold deemed a trust amendment via a petition for instructions. Among other things, the note gave Steele a $200,000 gift and the right to live in Arnold's house rent free for two years, following Arnold's death. Jonathan's attorney sent a letter warning Ashbrook that Jonathan would seek an order compelling Ashbrook to pay for the fees being incurred on the petition. New attorney no. 6 filed an elder abuse action against Jonathan and his siblings.

Jonathan then brought a petition against Ashbrook alleging Ashbrook be (1) suspended, (2) enjoined from further breach of trust, (3) removed, and (4) surcharged. Ashbrook resigned, mooting the first three causes of action. As to the fourth, Ashbrook filed an anti-SLAPP motion. Ashbrook argued he was being sued for bringing and funding litigation, which are protected activities.

The trial court denied the motion, concluding that the allegation was the spending of money in a manner that did not benefit the trust.

Ashbrook appealed.

On appeal, first the court looked at Jonathan's standing. This was after all a revocable trust. But the court agreed with and followed *Drake v. Pinkham* (2013) 217 Cal.App.4th, 400, as Jonathan had alleged Arnold was incompetent, and that allegation conferred standing. The court then looked at *Barefoot v. Jennings* (2020) 8 Cal.5th 822, which concluded that the court must determine standing by treating properly pled allegations as true. Although Jonathan must at some point during the prosecution of his petition prove this allegation, that itself was deemed to be "for a later day."

Once standing had been established, the court held if a fiduciary could strike breach of fiduciary claims based on misusing and wasting trust assets at the pleading stage, the Probate Code protections of beneficiaries would be undermined. In fact, if this were allowed, it would provide complete immunity when wasting trust assets on pointless litigation.

Comment: First, the Court of Appeal confirmed a contingent remainder beneficiary alleging incapacity is conferred standing under Probate Code section 15800. I don't think there is any question the courts are going to allow these sorts of actions to be brought.

Second, under *Starr*, litigation that constitutes a waste of trust assets will not be protected by anti-SLAPP. Therefore, will anti-SLAPP ever protect a trustee if a beneficiary merely alleges it is not the trustee's litigation that they are contesting, but instead the misuse of trust funds to fund the litigation? Potato, potato . . . tomato, tomato, I guess. Trustees, be careful.

11. The Presumption A Child Born During Marriage Is Child Of Spouses Bars Child From Taking As An Heir From True Biological Parent (PAK)

ESTATE OF FRANCO (2023) 87 Cal.App.5th 1270 [January 30, 2023]

Short Summary: Husband and wife had a falling out and separated. Wife dated Franco and became pregnant with his child. Wife reunited with husband, and then gave birth to child; all three agreed husband would raise the child as his own. The child's birth certificate listed husband as his father.

All this came out when child was an adult, and he established a relationship with Franco. Franco died intestate. Child sought a determination that he was Franco's heir. Was he?

The trial court said no, and child appealed.

A man is "presumed" to be a child's natural father if he meets the conditions in Family Code section 7540. Section 7540 provides, in pertinent part, that "the child of spouses who cohabited at the time of conception and birth is conclusively presumed to be a child of the marriage," commonly referred to as the marital presumption.

As a matter of policy, a child of a marriage under the Family Code section 7540 marital presumption is barred from proving a parent-child relationship existed with a deceased third person for purposes of inheritance under intestate succession. (*Estate of Cornelious* (1984) 35 Cal.3d 461, 463-464, 466-467.)

The principle here is that when husband and wife are living together as such, the integrity of the family should not be impugned. The husband is deemed responsible for his wife's child if it is conceived while they are cohabiting; he is the legal father, and the issue of biological paternity is irrelevant.

However, here the trial court did not make the required findings that the child's mother was cohabitating with her husband at the time of conception and birth. The case was remanded for further proceedings.

Comment: Despite ongoing changes to California law, the applicable law in this context, as previously confirmed in *Estate of Cornelious*, remains good law.

12. Unless The Trust Says Otherwise, A Trustee Must Remain Neutral In Litigation And Protect The Trust, Not Pick Sides (VLT)

ZAHNLEUTER v. MUELLER (2023) 88 Cal.App.5th 1294 [February 9, 2023]

Short Summary: Richard Mueller ("Richard") and Joan Mueller ("Joan") had two children, Katherine and Amy. Richard had a brother, Thomas, who had two daughters also. In August 2004, Richard and Joan created the Richard J. and Joan R. Mueller Living Trust ("Trust"), which named Katherine and Amy as equal residual beneficiaries and successor trustees upon the death of both settlors. The Trust contained a no contest clause. It also provided in relevant part, "the Trustee is authorized to defend, at the expense of the Trust Estate, any contest or other attack of any nature on this Trust or any of its provision. This paragraph shall not apply to any amendment of this document . . . executed after the date of this document."

Throughout the years, the Trust was purportedly amended three times. Richard and Joan amended the Trust in November 2005, but made no substantive changes to the terms of the Trust. Similarly, in December 2017, after Joan died (in October 2017) and Richard was diagnosed with cancer, Richard executed a second amendment primarily to name Amy and Katherine as successor co-trustees.

At issue was the Third Amendment, executed in April 2018. The circumstances surrounding its execution were suspect: There were two different versions of the Third Amendment and only the first version was executed by Richard. Both versions of the Third Amendment named Thomas as the successor trustee and gave $10,000 to each of Thomas' two daughters. However, the two versions of the Third Amendment differed in distributions shared amongst Katherine, Amy and Julie (Richard's daughter from a prior marriage). The Third Amendment also included a no contest clause, but did not authorize the trustee to defend, at the expense of the Trust, contests to the amendment.

Katherine and Amy both filed petitions to invalidate the Third Amendment. In April 2020, Katherine also filed a petition for an accounting and to surcharge Thomas. In August 2020, the trial court granted the request to invalidate both versions of the Third Amendment. In September 2020, Thomas filed an accounting which showed that he spent $201,164.15 in attorneys' fees in defending the Third Amendment. The trial court granted Katherine's petition to surcharge the trustee, ordering Thomas to pay the full amount of attorneys' fees he expended to defend the Third Amendment, finding that Thomas breached his duty to deal impartially with the beneficiaries over the validity of the Third Amendment. Thomas appealed.

The Court of Appeal affirmed, agreeing that Thomas was not impartial to the beneficiaries, and acted in his own interest in defending the validity of the Third Amendment, because his daughters stood to gain gifts under the Third Amendment. The Court of Appeal also found that Thomas should be surcharged

for the attorneys' fees expended to defend the Third Amendment because the Trust provision allowing a trustee to defend any contest to the validity of the Trust at the expense of the Trust was not applicable to any of the subsequent amendments.

13. Thankfully . . . Attorney's Duties To Non-Clients Are Very Limited (PAK)

GORDON v. ERVIN COHEN & JESSUP LLP (2023) 88 Cal.App.5th 543 [February 23, 2023; as modified on denial of rehearing March 20, 2023; review denied June 14, 2023]

Short Summary: Mother had three sons, and although she got along with son Kenneth, she didn't care much for Kenneth's wife or children. She hired an estate planning firm to amend her trust to disinherit Kenneth's children. Sometime after, as part of estate tax mitigation planning, she retained the same firm to assist in the formation of three LLCs, to hold income-producing real properties. Each son was assigned 30% membership interests. However, the transfer restrictions were liberal and allowed Kenneth to transfer the interests he received to his children.

After mother died, the other two children sued the estate planning firm. Their theory was that of "integrated estate planning": that is, the LLCs and the trust were part of an "integrated estate plan." Mom expressed a clear intent to disinherit Kenneth's children from her trust, and the same intent should have been integrated by the attorneys into the entity work and the drafting and planning for the interest in the LLCs. Even though they were not themselves clients of the firm, the children alleged they were owed duties as intended beneficiaries of the law firm's work performed.

The trial court granted the law firm's motion for summary judgment, and the appellate court affirmed the decision.

A lawyer can sometimes owe a duty to third parties who are the intended beneficiaries of the lawyer's legal work for the client, such as when the lawyer is retained by the client to draft a will, a testamentary trust, or an inter vivos trust or gift. (*Lucas v. Hamm* (1961) 56 Cal.2d 583, 590-591.) Whether courts will impose such a duty, however, depends on the analysis of a number of factors, including: (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct, and the (6) policy of preventing future harm.

However, in this case, separating the trust amendment from the LLC work, the facts did not show the client expressed a "clear, certain, or undisputed" intent to prevent the three grandchildren from receiving any shares of the LLC. The court rejected the argument that mom's intent to disinherit Kenneth's children in the trust translated to an intent to preclude their ownership of LLC interests.

In surprisingly strong language, the court also said a lawyer's duty to a nonclient does not extend to being a babysitter, a risk mitigation strategist, a sounding board, or a mental health specialist for the client. Making a lawyer liable in malpractice to a nonclient for failing to act in any role beyond the role of implementing the client's undisputed intent to benefit that nonclient is bad public policy.

Comment: Document everything, or document nothing? Those of you who know Bob Temmerman and Mike Desmarais well may have heard them debate these two positions. The planning prospective is to keep copious notes (Temmerman) and document everything. The litigation perspective (Desmarais), posits that planners should keep sparce notes and then opine that the work performed is itself evidence of what the client intended. This is a case supporting the latter . . . and Desmarais.

Therefore, unless perhaps the attorney has affirmatively represented they are integrating the intent of a prior plan in ongoing engagements, fortunately this case holds there is no implied duty to consider and analyze such prior engagements and ensure that a future engagement integrates that work. But isn't that best practices? Or, should your engagement agreements for ongoing entity work with clients make clear that the work being performed is a new engagement, and is not to be implied or warranted to be integrated with any prior work for that client, absent specific and clear instructions from the client to the contrary?

14. Nursing Homes Have The Burden Of Proving A Valid Arbitration Agreement So They Must Establish An Elder's Capacity To Consent To It (VLT)

ALGO-HEYRES v. OXNARD MANOR LP (2023) 88 Cal.App.5th 1064 [February 28, 2023; rehearing denied March 17, 2023; review denied May 31, 2023]

Short Summary: Decedent Cornelio Heyres suffered a stroke in August 2009. He was hospitalized for two weeks and then spent a month at a rehabilitation facility before entering Oxnard Manor, a skilled nursing facility. Four days later, Cornelio signed an arbitration agreement. After he passed, his family/successors-in-interest sued Oxnard Manor for elder abuse/neglect, wrongful death, and other claims. Oxnard Manor sought to enforce the arbitration agreement. Both sides relied on medical records to demonstrate Cornelio's capacity or lack thereof to consent to arbitration. The trial court found that Cornelio lacked the mental capacity to consent to arbitration and denied Oxnard Manor's petition to compel arbitration. Oxnard Manor appealed.

The appellate court affirmed. Although Oxnard argued that it was not its burden to prove Cornelio had the capacity to enter the agreement, it was Oxnard's burden to prove a valid arbitration agreement. The presumption that all persons have

capacity is rebuttable and mental capacity is a fact-specific inquiry. The level of mental capacity required changes depending on the issue at hand, with more complicated decisions requiring greater mental function.

Substantial evidence established lack of capacity, including Cornelio's inability to recognize his wife or granddaughter, failure to respond to questions about his care, inability to understand speech, and ability to respond only to simple questions or commands. Further, the agreement was a relatively complex five-page contract that included legal terms, referred to statutes, and waived the constitutional right to trial. Because substantial evidence supported the conclusion that Cornelio lacked capacity to enter into the arbitration agreement, Oxnard failed to meet its burden to establish a valid arbitration agreement.

15. Is Your Favorite Charity Sharing Its Donations With Your "Least Favorite" Charity? (PAK)

BREATHE SOUTHERN CALIFORNIA v. AMERICAN LUNG ASSN. (2023) 88 Cal.App.5th 1172 [March 3, 2023; review denied May 31, 2023]

It is not uncommon for some charitable organizations to have similar names, and similar charitable purposes, as others. Those charities may even affiliate with each other, in ways unknown to donors, and may agree to share donations.

One of the organizations in this case started in 1903 as the Los Angeles Society for the Study and Prevention of Tuberculosis, and subsequently became known as the American Lung Association of Los Angeles County.

It then affiliated with the national organization, ALA (American Lung Association) and the ALAC (American Lung Association of California). As part of this affiliation, it entered into revenue sharing agreements with the ALA and ALAC.

In 2006, following disagreements, the American Lung Association of Los Angeles County disaffiliated from the ALA and ALAC and was renamed "Breathe." The disaffiliation was confirmed by a judgment.

Among other things, the judgment referenced exceptions to shareable bequests made up and through three months following the judgment, including exceptions for funds restricted in writing by the donor, not later than the date of donation, which excluded or limited sharing.

Breathe, on one hand, and the ALA and ALAC, on the other, wound up in litigation over three donations. The first was via a trust instrument gifting funds to the "American Lung Association of California, for use at its Los Angeles County affiliate." In the second the donor was domiciled in Los Angeles County and the donation was for the purpose of establishing a perpetual fund to be known as the DON MARLIN and DR. MARY E. CARSTEN MARLIN fund. The third was to the AMERICAN LUNG ASSOCIATION OF LOS ANGELES COUNTY, Los Angeles,

California, to be used to establish the ERNEST BRUNNER AND IRENE BRUNNER FAMILY FUND, for research relating to the causes and prevention of lung disease.

The ALA argued, and the trial court agreed, that to fall under this exception a donor would need to expressly state he or she does not want their bequest shared with the national American Lung Association or the State constituent. Thus, the language of the three donations failed to fall under the exception.

The Court of Appeal reversed. The question is which interpretation is most likely to effectuate donor intent. This test focuses attention directly on an examination of the donor's intent, while the trial court's interpretation could easily frustrate that intent. Donors are unlikely to be aware of the possibility of revenue sharing. Accordingly, there is little reason to believe most donors would use express language referencing sharing, even if the language of the bequest makes it clear the donor intended for the entirety of the funds to go to the affiliate.

Here, the three disputed donations either required use at Breathe (the only Los Angeles County affiliate) and/or the intent was to restrict sharing as the donor specified the creation of a single fund, which causes impracticability of sharing.

Comment: The basic rule in the interpretation and construction of any will is that the intention of the testator must be carried out as nearly as possible. Another fundamental rule of the interpretation and construction of wills requires that every word should be considered and given some effect, if possible. The words of a will are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative. Moreover, the words used in a will must be given their ordinary, commonsense interpretation. A court's obligation is to interpret bequests to carry out the testator's intent as nearly as possible. The ruling here better follows settlor intent.

Second, how often do estate planners carefully consider the importance of restrictions on charitable gifts . . . e.g., "only to be used by the local chapter in Santa Clara County" or "to create a single endowment fund for the following purposes . . ."? There is much more revenue sharing among charities than either we or our clients know of. Take this into account when counseling clients and then drafting charitable bequests.

16. Anna Nicole Smith, the Probate Exception, and Its Narrow Application (PAK)

SILK v. BOND (9th Cir. 2023) 65 F.4th 445 [April 10, 2023; petition for writ of certiorari filed May 31, 2023; waiver of right of Silk to respond filed June 29, 2023; distributed for conference July 12, 2023; conference September 26, 2023]

Short Summary: Bond, who lived in Maryland, hated paying income taxes. He hired an advisor, Silk, who lived in California, to help him avoid them. Silk provided various services, many which were to be paid as incentive fees, based on

formulas usually determining tax savings, and then only to become payable upon Bond's death.

After Bond died in 2020, Silk filed a $3.1 million claim against the Estate in Maryland's Orphans' Court (aka probate court). The Estate disallowed the claim. Silk filed for breach of contract in federal court, and the Estate successfully moved to dismiss the action in entirety under the probate exception. The basis was the claim "cannot be resolved without first determining the value of the Estate," and the court would be required to take control of the appraisal process, which "would amount to the administration of Decedent's Estate—a right reserved to the state probate court."

The United States Court of Appeals for the Ninth Circuit reversed the judgment. The probate exception bar to federal jurisdiction is narrow. It is limited to cases in which the federal courts would be called on to (1) probate or annul a will, (2) administer a decedent's estate, or (3) assume in rem jurisdiction over property that is in the custody of the probate court. The claim here was contractual in nature. The fact that the court would need to value the Estate to calculate contract damages does not arise to administering an estate.

Comment: I guess that Bond's Estate hated paying Bond's tax advisor as much as Bond hated paying taxes.

Second tip . . . I don't recommend taking work where your fee is formula-based and deferred until after your client's death.

On a more serious note, this case confirms the three limitations on federal jurisdiction. Recall *Marshall v. Marshall*, and Anna Nicole Smith's marriage to billionaire J. Howard Marshall II that garnered significant attention. On the day the couple tied the knot Howard was 89 and Anna was 26. Anna brought litigation after Howard's death based on alleged promises he made to include her in his estate. The Supreme Court reversed a decision that the probate exception applied (the reversed decision had found that the tortious interference with inheritance claims brought by Anna were claims ordinarily being decided by a probate court in determining the validity of the decedent's estate planning instrument, and thus fell under the probate exception). *Marshall v. Marshall* (2006) 547 U.S. 293. This case continues the court's narrow view of the probate exception.

17. A Trustee May Not Buy Or Exchange Trust Property For Himself By Using A Notice Of Proposed Action; And Gifts Of A Principal's Property To An Agent Under A Power Of Attorney Must Be In Writing (VLT)

POOL-O'CONNOR v. GUADARRAMA (2023) 90 Cal.App.5th 1014 [April 25, 2023]

Short Summary: Decedent Albert R. Pool and his wife established the Albert R. Pool Revocable Trust in 1992 ("Original Trust"). Together, they had four biological children and had adopted their granddaughter. Decedent's wife predeceased him in 2002. On her death, the Original Trust provided that the beneficiaries and specific gifts became irrevocable. In 2012, Decedent's nephew Christopher began helping Decedent manage the finances and pay bills. In February 2013, Decedent executed an Amended and Restated Trust ("Trust") that named Christopher as successor trustee, a pour-over will nominating Christopher to act as executor, and a Power of Attorney ("POA") appointing Christopher as his attorney-in-fact. The Trust provided for specific gifts and allocated the residue among others, including Decedent's children and Christopher. Decedent died on February 28, 2018.

During the relevant time period, Decedent had only one bank account. In September 2017, Decedent added Christopher as an authorized signer to the joint account. In October and November 2017, Christopher deposited approximately $99,000 and then $100,000 into the account. Christopher was unable to testify as to the source of these funds. Prior to Decedent's death, Christopher also made a number of withdrawals totaling approximately $42,000. Following Decedent's death, Christopher loaned $25,000 from the account to a friend with a note payable to the Trust, and also wrote himself two checks for $200,000 and $50,000. Christopher testified that all of his acts with respect to the joint account were taken in his capacity as attorney-in-fact.

At the time of his death, the Trust held a real property in Lebec, CA ("Property"). Per the Trust, Christopher's mother was permitted to live in the Property for her lifetime and if she no longer wished to occupy the Property then the Trustee was to sell the Property and add the proceeds to the residue. In November 2018, Christopher, as Trustee, informed the beneficiaries that he had resided at the Property with permission from Decedent and his wife, that he had spoken to the beneficiaries who were willing to waive any interest in the Property and consent for it to be transferred to Christopher, that he had obtained an appraisal for the Property, and that the letter served as notice of the Trustee's intent to transfer the property to himself. In January 2019, Christopher deeded the Property to himself.

In June 2019, Decedent's daughter initiated litigation and filed a number of petitions, including a petition to remove Christopher as trustee and a petition seeking to surcharge Christopher as trustee for breach of trust, to determine

ownership of assets, and requesting double damages ("Surcharge Petition"). The parties subsequently stipulated that Christopher would resign as trustee. In its ruling on the Surcharge Petition, the probate court ordered, among other things, that Christopher reconvey title of the Property to the Trust, that the joint account was not a trust asset, and that Christopher pay approximately $335,000 to the to the new trustee. Christopher appealed.

The appellate court confirmed the trial court's ruling but corrected one typographical error in the damages total. With respect to the Property transfer, on appeal Christopher argued that the transfer was lawful due to the beneficiaries' failure to object to the November 2018 notice of proposed action. The Court of Appeal rejected that argument finding that per Probate Code section 16501 a trustee may not buy or exchange trust property through use of a notice of proposed action.

With respect to the transactions that occurred in the joint account, the Court of Appeal found that Christopher's deposit of the funds into the joint account in 2017 was a breach of Christopher's fiduciary duties as Decedent's attorney-in-fact. Christopher failed to keep the deposits separate and distinct from other property, did not avoid the conflict of interest that presented itself in depositing funds into a joint account to which Christopher had unfettered access in his personal capacity, and he did not keep a record of the transactions involving the subject funds as required per Probate Code sections 4233 and 4236. Further, the Court concluded that Christopher's deposit of the funds into the joint account violated Probate Code section 4264 by creating a survivorship interest in the funds in his favor and was tantamount to gifting himself the funds.

As to the withdrawals prior to Decedent's death, the Court found that during Decedent's lifetime the funds in the joint account belonged to Decedent alone per Probate Code section 5301. Christopher's withdrawals were performed under the authority of the POA, but the POA prohibited any gifts in excess of the federal gift tax exclusion. Thus, any excess withdrawals were outside the POA authority. Having wrongfully removed the funds, Christopher stood as constructive trustee of the funds for the benefit of Decedent or his heirs and effectively extinguished any right of survivorship he may have had by withdrawing them from the joint account.

Finally, the Court found that the probate court did not err in ordering that a $14,000 gift be deducted from Christopher's distributive share insofar once the gift was made it was no longer part of the joint account.

Takeaway: Probate Code section 16501 prohibits a trustee from buying or exchanging trust property through use of a notice of proposed action. Further, an attorney-in-fact's deposits of the principal's funds into a joint account held by principal and agent was a breach of fiduciary duty as it created a survivorship interest in the funds in attorney-in-fact's favor and was tantamount to a gift. Additionally, the attorney-in-fact's withdrawals of principal's funds from same joint

account prior to principal's death extinguished any right of survivorship attorney-in-fact may have had if the funds had remained in the account.

18. Making A Mountain Out Of A Molehill: Appellate Standing As To One Discrete Issue Does Not Confer Appellate Standing On Other Issues Affecting Nonappealing Third Parties (VLT)

ESTATE OF KEMPTON (2023) 91 Cal.App.5th 189 [May 5, 2023]

Short Summary: Charles Kinney, a disbarred attorney and vexatious litigant, appealed a probate court's Order on a First Account and for Final Distribution concerning: 1) a decision not to pay him his statutory fee; 2) cancellation of an agreement with Judith, a prior administrator of the estate, to perform services related to estate real property; and 3) approval of a distribution of sales proceeds from real property to satisfy indebtedness pursuant to certain judgment liens against the property.

Kinney briefly served as Judith's counsel in administration of her late daughter Kempton's estate. Kempton had been involved in bringing a series of baseless lawsuits with Kinney that resulted in judgments against them for hundreds of thousands of dollars.

After years of delay, Judith was removed as administrator. A special administrator was appointed who prepared an account and report, indicating in relevant part that Kinney provided no benefit to the estate. He recommended paying Kinney a reduced $1,000 statutory fee and to pay it to a lienholder on one of the judgments entered against him, rather than to Kinney himself.

After withdrawing as Judith's counsel, Kinney filed a request for special notice in the probate proceeding as an interested party, giving him the right to participate in the case as to all matters affecting his potential interest. Kinney objected to all filings by the special administrator.

Clark, the victim of Kinney's and Kempton's frivolous litigation filed creditor's claims in the Estate, seeking payment for various few awards. Kinney's successor filed objections to three claims and rejected the others. Clark argued that the awards made after Kempton's death were debts of the estate and payable as administrative claims. Clark also recorded judgment liens against the estate real property. When the house was sold, over $300,000 was paid to Clark.

Holdings:

1. Kinney lacked standing to appeal the probate court's order with respect to decisions by the Special Administrator that did not injure Kinney.
2. Under doctrine of claim preclusion, a final judgment in the prior case barred Kinney from relitigating issues pertaining to a cancelled contract with estate.

3. The probate court did not abuse its discretion in approving payment of Kinney's statutory fee to the attorney's third-party judgment creditor.
4. Sanctions for filing a frivolous appeal were warranted.

Analysis: Kinney argued his statutory fee was $0, but it was in fact allowed and paid to Clark. Kinney was not adversely affected by Court confirmation of actions that had nothing to do with payment of his fee to Clark. Kinney was not a "party aggrieved" by the probate court's rulings to establish standing on appeal, as neither his rights nor interests were injuriously affected by the order under review. Because most decisions in the probate court's order had not injured Kinney, he has no standing to appeal anything other than the mode of payment of his fee.

Kinney's property management contract was canceled by the Special Administrator on the ground that Kinney was not property licensed to perform property management services. Kinney had already attempted to file a lawsuit challenging its cancellation, but it was dismissed because he was denied leave to pursue it under the vexatious litigant statute. Kinney had the opportunity to present his argument but was unable to demonstrate sufficient merit to allow the case to proceed. Under the doctrine of claim preclusion, the final judgment in that case bars re-litigation of the issue of the cancelled contract.

Allowance and apportionment of statutory fees is within the discretion of the property court. The Court found no abuse of discretion for reduction of the statutory fees or payment of Kinney's fee to Clark. The judgment lien had been properly presented in the Estate, and Kinney failed to challenge it. The Court had discretion to approve payment of the fees to Clark.

The Court found that sanctions for the "partially frivolous" appeal were allowable and warranted.

Takeaway: Standing to appeal an order is limited to issues for which one's rights or interests have been injuriously affected by the judgment or order.

19. An Ongoing Potpourri Of Issues In A Hotly Contested Conservatorship Established in 2015 (VLT)

CONSERVATORSHIP OF TEDESCO (2023) 91 Cal.App.5th 285 [May 8, 2023; rehearing denied May 22, 2023; review denied August 23, 2023]

Procedural Note: This case has an extensive procedural history including several appeals/writs. The Court of Appeal took judicial notice of prior opinions which had an impact in this appeal.

Short Summary: In 2015, a conservatorship of the estate was created for Thomas Tedesco, a wealthy nonagenarian, and Thomas requested the appointment of David Wilson, an independent professional fiduciary, as conservator. Thomas's

second wife, Gloria Tedesco was present at the hearing and stipulated on the record, through counsel, to Wilson's appointment.

A group of non-appointed counsel held themselves out as counsel for Thomas, Thomas's wife Gloria and various other allegedly interested parties. The trial court found that non-appointed counsel were not independent and to have a conflict of interest such that they should not represent Thomas. Nevertheless non-appointed counsel and Gloria continued to act as if non-appointed counsel represented Thomas, Gloria and others including themselves.

Six years later in 2021, after protracted litigation, Gloria filed a verified petition to void Thomas's conservatorship and vacate all orders of the probate court, based on Thomas's alleged lack of independent counsel. Co-trustee of Thomas's trust filed a demurrer on several grounds and Thomas's court-appointed conservator filed a motion to strike the petition and to disqualify non-appointed counsel from representing any party in this or any related proceeding. The trial court (i) sustained the demurrer without leave to amend, (ii) struck Gloria's petition, and (iii) ordered that non-appointed counsel may not directly, or indirectly through Gloria or others, represent Thomas.

Gloria raised "a myriad of disjointed arguments." Nonetheless, the appellate court affirmed the trial court's ruling as follows:

1. Res judicata barred Gloria's claim about denial of a hearing on a prior motion to vacate the conservatorship (which has been subject to a prior writ). The judge's orders establishing the conservatorship issued prior to disqualification were voidable rather than void, and good cause did not exist to set aside his orders.
2. Thomas was not denied independent counsel. Non-appointed counsel may not represent a conservatee unless approved and appointed by the probate court.
3. With respect to Gloria, non-appointed counsel could not represent her because they had a conflict of interest and Thomas did not have capacity to provide informed consent.
4. Gloria had standing to petition for termination of the conservatorship but she had no standing to raise claims on his behalf for violation of his civil rights. In fact, the evidence showed that "the [probate] court's attempts to appoint independent counsel for Thomas have been repeatedly thwarted by Gloria, [Deborah] Wear, or others who injected themselves into the attorney-client relationship, and made it impossible for appointed counsel to remain independent and act solely for Thomas's benefit."
5. Lastly, the probate court, which was the first court to assert jurisdiction in this action, had exclusive concurrent jurisdiction over any issues related to the conservatorship. Thus, the probate court could disqualify non-appointed counsel from representing Thomas in other matters.

20. Personal Liability For Unpaid Estate Taxes On Trustees, Successor Trustees, And Transferees, Including By Way Of Settlement (PAK)

UNITED STATES v. PAULSON (9th Cir. 2023) 68 F.4th 528 [May 17, 2023]

Short Summary: To settle disputes among the decedent's surviving spouse and his heirs, the trustees of the decedent's revocable living trust transferred assets from his trust to the spouse and a grandchild. An initial trustee was removed and replaced with trustee no. 2, who was removed and replaced with co-trustees (nos. 3). Trustee no. 2, also an executor, resigned as executor in consideration for other trust assets.

However, by this time (15 years from date of death) the estate tax had still not been paid in full, and the IRS was still owed over $10 million. The Service filed an action against the surviving spouse, trustees nos. 2 and 3, and the grandchild. Successor trustees nos. 3 argued that the trust was insolvent at the time they took over. The spouse, grandchild, and trustee no. 2 argued property received per the settlements was not from the estate at death.

In a 73-page decision, heavy on statutory construction, the Ninth Circuit ruled that liability for estate taxes is imposed on anyone who (1) receives estate property on or after the date of decedent's death or who (2) has possession of estate property (that is, successor trustees who receive property after the decedent's death).

The court concluded trustee no. 2 (the removed trustee), and trustees nos. 3 (the appointed successor trustees) were liable, as trustees, for the unpaid estate taxes on property from the gross estate, held in the living trust, which liability however cannot exceed the value of the property at the time that they received or had it as trustees.

Further, the spouse and grandchild were trust beneficiaries, as the court was not persuaded that the structure or context of the statute, or policy considerations, required a narrower interpretation of "beneficiary." However, the liability of each of these defendants cannot exceed the value of the estate property at the time they received it.

The matter was remanded so the district court could determine the amount of each defendant's liability.

Comment: You will no doubt hear more about this case in tax programs. This case teaches important lessons for litigators settling cases with taxable estates where estate tax may still be owed. Be careful.

Second, trustees . . . do not distribute assets too early, as it may lead to personal liability for both the trustee and the beneficiaries if the trust is left without

sufficient funds with which to pay estate taxes due. And, when planning distributions, hold a sufficient reserve for all administrative expenses, including taxes.

Finally, even though the three-year statute may have run on your 706, best practices is to request an estate tax closing document or account transcript before distributing the reserve. Practice conservatively.

21. Section 15402 . . . Here We Go Again . . . And When Will The Supremes Clear This Up? (PAK)

DIAZ v. ZUNIGA (2023) 91 Cal.App.5th 916 [May 19, 2023]

Short Summary: This is yet another of a series of recent cases interpreting Probate Code section 15402. The plain language of section 15402 states that a settlor may modify the trust by the procedure for revocation set forth in Probate Code section 15401, **unless the trust instrument provides otherwise**. But, what exactly does this qualifying statutory language mean?

Here, the subject trust amendment provision stated as follows:

> "*The Trustor may at any time during Trustor's lifetime amend any of the terms of this instrument by an instrument in writing signed by the Trustor and delivered by certified mail to the Trustee.*"

Soon after the settlor's death, a purported trust amendment dated in 2007 was found in an envelope among papers in a container kept in the settlor's bedroom closet. The stamped envelope was addressed to his attorney. There was no evidence in the record to indicate the settlor discussed the purported amendment with anyone or that he mailed it to his lawyer.

Litigation over the validity of the amendment followed. The trial court issued a final statement of decision ruling that the 2007 document did not constitute a valid amendment to the Trust because the settlor did not deliver the 2007 document to himself as trustee by certified mail, as specified in the Trust. An appeal followed.

The appellate court acknowledged that California courts are divided as to what happens when the trust instrument specifies how the trust may be modified but does not state that the specified modification method is exclusive. In one line of cases, courts have held that when the trust instrument "specifies how the trust is to be modified," then "that method must be used to amend the trust." (*King v. Lynch* (2012) 204 Cal.App.4th 1186, 1192, 1193; see *Conservatorship of Irvine* (1995) 40 Cal.App.4th 1334, 1343–1345; *Balistreri v. Balistreri* (2022) 75 Cal.App.5th 511, 518.) Under this line of cases, the stating of a modification procedure is all that is needed, following the rational that "**unless the trust instrument provides otherwise**" requires a strict interpretation…the inclusion of any amendment clause is *providing otherwise*.

In contrast, the court in *Haggerty* and the dissent in *King* concluded that unless the trust terms expressly preclude the settlor from using alternative statutory methods to modify the trust instrument, the modification procedures set forth in section 15402 may be used. (*Haggerty v. Thornton* (2021) 68 Cal.App.5th 1003, 1011–1012; *King*, *supra*, 204 Cal.App.4th at pp. 1195–1198 (dis. opn. of Detjen, J.).) These cases read into section 15402 a requirement that more settlor intent is needed than the mere inclusion of an amendment clause in order for such a clause to arise to the only method by which the settlor may amend the trust.

Here, the appellate court stated that had the settlor followed the amendment procedures set forth in the trust, his intention to modify the trust terms would not be in doubt. On the facts presented here, the settlor's intentions are unclear. After drafting and signing the 2007 document, the settlor may have placed the document in his closet in order to reflect on the proposed changes before finalizing them. That he did not do so by sending the document to himself by certified mail may indicate that he decided against the modifications.

That the trust uses permissive, rather than mandatory language, stating that the trustor "may" amend the trust terms, did not make the alternative statutory procedures available. The trust set forth a specific method for amending the trust terms, and therefore it must be followed.

Comment: While we wait for the California Supreme Court to rule on *Haggerty* and *Balistreri*, attorneys may argue either position. A strict interpretation effectively mitigates the court's ability to find in favor of settlor intent where an amendment does not exactly follow the trust's terms. But, in my opinion it is hard to disagree with this strict approach, as to reason otherwise reads into the statute a further test.

Drafting attorneys should review their documents, and administration and litigation attorneys should add review of the amendment clauses to their checklists, as less than careful drafting may cause an amendment to be invalid, with limited recourse available to a trustee in such a situation.

Then, there is the other issue of revocation, where much more flexibility exists unless the revocation provision is expressly stated to be exclusive.

Finally, what are best practices when drafting for married couples? For elderly or vulnerable clients? Should your trust have a "sole and exclusive" revocation clause . . . or a precise amendment provision?

22. How "Tight" Has that Special Needs Trust Been Drafted? (PAK)

MCGEE v. STATE DEPT. OF HEALTH CARE SERVICES (2023) 91 Cal.App.5th 1161 [May 24, 2023]

Short Summary: Federal law allows a severely disabled individual under the age of 65 to shelter his or her assets in a safe-harbor trust established for the individual's sole benefit by the individual (the trust beneficiary), the beneficiary's parent, grandparent, or legal guardian, or by a court. In such event, the trust assets are not considered to be the beneficiary's resources when determining whether the beneficiary qualifies to receive needs-based public assistance, in particular supplemental security income (SSI) and Medi-Cal. The beneficiary may shelter the assets in the special needs trust on condition the state will receive all amounts remaining in the trust upon the beneficiary's death or the trust's termination up to the amount of Medi-Cal benefits the state paid for the beneficiary. (42 U.S.C. section 1396p(d)(4)(A); Probate Code sections 3602(d), 3604, 3605.)

The trustee may be prohibited from making distributions that affect the beneficiary's eligibility for SSI and Medi-Cal, or may be given discretion to make such distributions if they determine doing so to be in the beneficiary's best interest.

In this case the trust stated: "If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, *the Trustee shall not be liable for having caused the loss of such benefits*."

The trust also defined special needs broadly as "the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency."

On a petition to settle a trust accounting, the State Department of Health Care Services filed an objection to the accounting, contending the trustee had used trust funds to make multiple unnecessary purchases. Disputed payments included expenditures for food for the beneficiary and caregivers who traveled with her, for animals not shown to have been used for a qualifying purpose, for automobile use and gas, gifts, donations, furniture, lamps/rugs, and décor, taxes, utilities, vehicle maintenance, insurance, a mortgage, and to a construction company. Following hearings, the trial court rejected the accounting, finding that trust funds had been spent on the beneficiary's behalf for matters which did not qualify as "special needs" under the trust instrument, and surcharged the trustee. The trustee appealed.

The appellate court found that the trial court had construed special needs too narrowly, based on the definition in the trust and the parameters under applicable

authority. Special needs may include anything the beneficiary needs, or anything that would be useful or in any way helpful to the beneficiary, if it is not paid for or provided to the beneficiary from a public assistance benefit program or some other source. Hence, the matter was remanded.

However, upon remand, if the subject distributions reduced or eliminated the beneficiary's eligibility for public benefits, the trustee must be able to show that such distributions were in the beneficiary's best interest and the trustee acted in good faith.

Comment: Whether drafting a "(d)(4)(A)" trust or a third-party special needs trust, the drafter should consider the scope of the definition of "special needs" and whether to authorize the trustee to make distributions which result in disqualification for public benefits. If opting for liberality by allowing for disqualifying distributions, this case confirms that so long as a decision-making process is documented prior to the distribution, the trustee may not have much to worry about, as it is the general rule that if the power of the trustee is discretionary, the court is not to find against the trustee merely because it disagrees with him or her, but it must find some abuse of discretion or bad faith. The court is not permitted to substitute its judgment and discretion for that of the trustee.

23. Don't Judge Other Peoples' Relationships; But More Importantly, Remember To Update Your Estate Plan Or The Consequences Could Be Dramatic (VLT)

ESTATE OF BERGER (2023) 91 Cal.App.5th 1293 [May 25, 2023; review denied August 16, 2023]

Short Summary: Melanie Berger ("Decedent") and Maria Coronado ("Maria") began dating in the Spring of 2002. In early August 2002, Maria proposed to Decedent, who accepted. Maria was going through a divorce and had three minor daughters from the prior marriage. Decedent had a sister with whom she had an "off and on" relationship.

Decedent had been assigned male at birth. After having lived as a woman for a year upon consultation with and as directed by her doctor, as ordered, she arranged to have gender reassignment surgery in late August 2002. After Maria proposed, but before Decedent's surgery, Maria visited family in Spain with her daughters.

On Aug. 16, 2002, while Maria was still in Spain, Decedent wrote a letter stating her testamentary wishes, addressed to "To whom it may concern." She signed and dated it without any witnesses. Concurrently, she emailed Maria informing her of the letter, that Decedent would leave Maria a copy on Maria's desk chair, and then

actually did so. After Decedent's surgery, the relationship continued another six months. The two never discussed the letter at any point thereafter. The relationship ended in spring 2003 and all contact between the two ceased. After the breakup, Decedent became a recluse and increasingly religious, often telling neighbors she wanted to leave her assets to the church.

Decedent died in 2020. Her pastor found the 2002 letter and informed Maria. Maria petitioned for probate seeking to admit the letter as Decedent's Will; Decedent's sister opposed the petition. After evidentiary hearings, the trial court denied Maria's petition holding the letter did not comply with Will execution formalities under Probate Code section 6110, subds. (a)-(c)(1) and that Maria failed to prove by clear and convincing evidence that Decedent intended the letter to be her Will as required under Section 6110, subd. (c)(2). Maria appealed.

The Court of Appeal held, generally, in considering extrinsic evidence under these circumstance, it is not the courts' purpose to construe the provisions of the purported Will, regardless of the presence or absence of ambiguities, but to divine only whether the purported testator intended the document under examination to serve as their Will. So, while the trial court did not err in admitting extrinsic evidence, the court's denial of Maria's petition was not supported by substantial evidence requiring the Court of Appeal to affirm its findings. And it follows, that the words in the letter and surrounding circumstances relating to creation and execution of the letter compel a finding Decedent intended it to have testamentary effect and thus constituted a Will, as a matter of law.

More specifically, the Court of Appeal held:

1. Where the objective is to determine testamentary intent, rule prohibiting extrinsic evidence to interpret an unambiguous document does not apply;
2. The letter reflected Decedent's testamentary intent at time of execution, therefore, noncompliance with formalities may be overlooked and the letter admitted as a Will;
3. Evidence that about the lack of discussion of the letter between Decedent and Maria and/or Maria's daughters at time of execution or after had no bearing on testamentary intent;
4. Questions of lower court regarding parties' relationship during Decedent's life were irrelevant to determination of her testamentary intent at execution;
5. Statutory exception to two-witness requirement for a Will would not be construed to require at least one witness to document's execution; and
6. Evidence of the lapse or ademption of an asset listed in the letter had no bearing on Decedent's testamentary intent at execution.

Takeaway: Where a document purporting to be a Will does not comply with all the ordinarily necessary formalities to be considered valid, a court may nonetheless consider extrinsic evidence to ascertain whether the purported testator had the requisite testamentary intent to create a Will.

24. What is a Trust? (PAK)

DUPREE v. CIT BANK, N.A. (2023) 92 Cal.App.5th 142 [May 31, 2023; as modified June 28, 2023]

Short Summary: A trust is simply a collection of assets held for the benefit of designated beneficiaries, and as such, has no ability to sue or otherwise act independently from a trustee. In this case the "trust" filed a lawsuit; could it? Ms. Redland owned two properties, "Parcel One" and "Parcel Two." Ms. Redland obtained a reverse mortgage, secured by a deed of trust. After her death, her successor trustee argued that that Ms. Redland only encumbered Parcel One. The lender made the case that Parcel Two was to be encumbered as well, or at least that the parties understood any owner of Parcel One would have an easement running through Parcel Two by implication.

A lawsuit was mistakenly brought in the name of Ms. Redland's trust (the Trust) to quiet title. The lender argued the Trust itself had no legal capacity, and thus the lawsuit was void. The successor trustee proposed to amend the complaint to substitute himself, as successor trustee, as plaintiff. Relying on the void ab initio principle, the trial court ruled it had no power to allow a curative amendment substituting the successor trustee for the Trust, since the complaint was a nullity from inception. The successor trustee appealed.

The appellate court rejected the trial court's ruling.

"Fundamental" jurisdiction means entire "absence of authority over the subject matter or the parties." That was not the case here. Under these circumstances, the complaint mistakenly filed in the name of the Trust was presumptively within the trial court's subject matter jurisdiction. Thus, the court may, in furtherance of justice, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect. The court concluded the trial court abused its discretion and should have allowed the amendment substituting in the successor trustee.

Comment: Attorneys never represent "the trust." A trust has no independent legal existence. A trust lacks capacity to sue. A lawsuit brought by a "trust," or a judgment against a "trust" is void. However, as per this case, in the "furtherance" of justice, a lawsuit brought by the "trust" may be amended to substitute in the trustee. Follow best administration practices by always iterating that you represent the trustee.

B. OTHER CALIFORNIA LEGISLATION OF INTEREST

Selected Legislation of interest to trust and estate attorneys chaptered between May 15, 2022, and July 1, 2023.

1. AB 1716 (Maienschein) Estate Disposition.

Status: 06/21/22 Chaptered – Secretary of State – Chapter 29 Statutes of 2022

Per the Legislative Counsel's Digest:

(1) Under existing law, upon the death of a person who is married or in a registered domestic partnership, half of the community property and quasi-community property belongs to the surviving spouse, unless the spouses have agreed in writing to divide the property in another manner. Existing law requires, with specified exceptions, that upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse. Under existing law, those debts are chargeable against the fair market value, as specified, of property including community property, quasi-community property, and separate property that passes to the surviving spouse when the deceased spouse dies intestate and the property passes "without administration."

This bill would specify that, in calculating the available amount of the community property, quasi-community property, and separate property that passes to the surviving spouse, "without administration" refers to property that passes to the surviving spouse without administration under the provisions relating to intestate succession. The bill would make a conforming change to include community property with a right of survivorship within the scope of the bill.

(2) Existing law establishes procedures that authorize a person to receive property from a decedent's estate without probate administration, including both personal property and real property of small value. Under existing law, when the decedent's estate is being administered, or going through intestate administration procedures, a person who receives property from an estate may be personally liable for the decedent's unsecured debts, or the transfer may be subject to the claim of a person with a superior right, as specified.

This bill would recast and revise various provisions relating to the transfer of property from a decedent's estate as described above, including generally identifying a person who takes property under the above circumstances as a "transferee" and defining other related terms. Among other changes, the bill would require a transferee to make restitution to a person with a superior right to the property, but with respect to the decedent's debt, the bill would instead make the transferee personally liable to the estate for a share of the decedent's debt, as prescribed. The bill would authorize a transferee to voluntarily return property to the estate for administration, as specified.

The bill would revise the treatment of property returned by the transferee to the estate that has produced income while in the transferee's possession, by requiring the value of that income to be returned to the estate if the income would have accrued to the state had the property not been transferred to the transferee.

Comment: In *Kircher v. Kircher* the court held nonprobate property, such as property held in joint tenancy that passes to the survivor outside of probate because of the spousal relationship, was liable for the deceased spouse's debts. (*Kircher v. Kircher* (2010) 189 Cal.App.4th 1105.) However, if the decedent's joint tenant had not been a spouse, the surviving joint tenant would not have been liable for the decedent's unsecured debts. Thus, the court's interpretation in *Kircher v. Kircher* made a surviving spouse more liable for a decedent's debts than anyone else. This bill limits the liability of a surviving spouse for a decedent's debt by imposing liability only when it would, absent the statutory authorization for the surviving spouse to receive the property without administration, be subject to probate administration. The bill thus effectively abrogates the holding in *Kircher v. Kircher*, and effectively excludes non-probate property, such as property received by trust, property held in joint tenancy, and payable on death accounts, putting spouses on a similar playing field as other recipients of such non-probate property.

Under the Probate Code section 13100, where the gross value of the decedent's real and personal property does not exceed $166,250, the personal property may be collected by affidavit. Real property may be collected without being subject to a probate administration if it does not exceed $55,425.

Under the "return rule," however, if the decedent's estate is probated, the personal representative can require the return of property transferred under these small estate provisions to pay any obligations of the decedent or to be transferred to a person with a superior right to the property. This bill maintains the "return rule" if a person has a superior right, but replaces the "return" if to pay an obligation with a provision that makes the transferee personally liable to the decedent's estate for a calculated share of the decedent's unsecured debts. However, the transferee may nevertheless voluntarily return transferred property to the estate. If however property is being returned due to another having a superior right, carefully review the revised restitution provisions as to income collected by the transferee prior to return.

2. AB 1745 (Nguyen) Trusts: Notifications.

Status: 06/21/22 Chaptered – Secretary of State – Chapter 30 Statutes of 2022

Per the Legislative Counsel's Digest:

Existing law generally limits the time period within which a person may bring an action to contest a trust to no more than 120 days from the date the notification by the trustee is served upon the person, or 60 days from the day on which a copy of the terms of the trust is mailed or personally delivered to the person during that 120-day period, whichever is later.

This bill would specify that the 120-day period described above only applies when a revocable trust becomes irrevocable upon the death of a settlor of the trust or because of a contingency related to the death of a settlor of the trust.

3. AB 2245 (Ramos) Partition Of Real Property

Status: 07/01/22 Chaptered – Secretary of State – Chapter 82 Statutes of 2022

Per the Legislative Counsel's Digest:

Existing law authorizes an owner of an estate in real property to commence and maintain an action for partition of the property against all persons having or claiming interests in the estate as to which partition is sought. If the court finds that the plaintiff is entitled to partition, it is required to make an interlocutory judgment that determines the interests of all owners of the property and orders that the property be divided among those parties in accordance with their interests or sold with the proceeds divided among them, as specified.

Under the Uniform Partition of Heirs Property Act, specified procedures apply in an action to partition real property that is heirs property, defined as property for which there is no agreement regarding partition in a record that binds the cotenants of the property, one or more of the cotenants acquired title from a relative, and meets one of specified thresholds regarding cotenants who are relatives or who acquired title from a relative.

This bill would enact the Partition of Real Property Act, which would expand the scope of the Uniform Partition of Heirs Property Act to apply to any real property held in tenancy in common where there is no agreement in a record binding all the cotenants which governs the partition of the property. The bill would make other conforming changes.

Comment: Opportunistic speculators have exploited the power of sale by partition by acquiring a single family member's interest in inherited property, at below-market value, and then forcing the sale of the whole thing, often at below-market value. This bill enacts the Partition of Real Property Act and modifies the default

legal procedures for the partition of real property co-owned by multiple people as tenants in common *regardless* of how the property was acquired.

AB 633 (Calderon), titled "Partition Of Real Property: Uniform Partition Of Heirs Property Act", was chaptered on July 23, 2021. It enacted the Uniform Partition of Heirs Property Act, which requires specified procedures in an action to partition real property that is heirs property, defined as property for which there is no written agreement regarding partition that binds the cotenants of the property, one or more of the cotenants acquired title from a relative, and meets one of specified thresholds regarding cotenants who are relatives or who acquired title from a relative. AB 2245 removes references to "heirs property" and related terminology in the Uniform Partition Heirs Property Act (UPHPA) so that the procedures for partition under UPHPA become applicable to partition of any real property owned by tenants in common. The new law also specifies that the UPHPA partition procedures should be followed in situations where there is no other agreed upon and recorded procedure for partition that binds all the cotenants.

It assures that, before any partition of the land takes place, the co-owners who did not seek partition have the opportunity to purchase the interest of the co-owner seeking partition. (Code Civ. Proc., § 874.317.) This makes it harder for speculators to pick off one co-owner, buy that co-owners interest in the property, and then use that interest to force a partition.

It also requires the court to examine all factors and circumstances involved, including things like how long the property has been owned by the co-owners and the nature of their attachment to it. The court is only authorized to order partition by sale if it finds that partition in kind would result in "great prejudice" to the co-tenants as a group. If ordered, the property must be marketed by a real estate broker as opposed to a court ordered sale at auction.

The new law will apply to *all actions for partition of real property filed on or after January 1, 2023*, and supersedes any conflicting provisions of the title of the Code of Civil Procedure governing partition of property.

4. AB 1824 (Committee on Public Employment and Retirement) Public employees' retirement.

Status: 09/02/22 Chaptered – Secretary of State – Chapter 231 Statutes of 2022

Per the Legislative Counsel's Digest:

Existing law, the Teachers' Retirement Law (TRL), establishes the State Teachers' Retirement System (STRS) and creates the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program, based on final compensation, creditable service, and age at retirement, subject to certain variations. STRS is administered by the Teachers' Retirement Board. Existing law creates the Cash Balance Benefit Program, which is

administered by the board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time.

The TRL defines "creditable service" in connection with the Cash Balance Benefit Program with reference to specified activities performed for certain employers, including for a prekindergarten through grade 12 employer, as specified, and for a community college employer, as specified. STRS prescribes the activities that earn creditable service in this regard to include trustee service, as specified.

This bill would revise the description of trustee service to link it to the definition of this service, which means duties performed by a member of the governing body of an employer.

Existing law requires that creditable service subject to coverage by the Cash Balance Benefit Program and service with the last employer or employers of the participant that is creditable under the Defined Benefit Program be terminated prior to the member's retirement date.

This bill would revise this requirement to instead specify that this termination of services does not include retired member activities, as defined, or retired participant activities, as defined. The bill would also make these changes in provisions relating to termination benefits under the Cash Balance Benefit Program.

Existing law authorizes a participant in the Cash Balance Benefit Program to designate or change the designation of one or more primary beneficiaries and one or more contingent beneficiaries to receive a lump-sum death benefit that may be payable. Existing law authorizes a person, trust, or the estate of the participant to be a beneficiary for the lump-sum death benefit.

This bill would delete the authorization for a person, trust, or the estate of the participant to be a beneficiary of the lump-sum death benefit and would add a provision generally authorizing a corporation, trust, charitable organization, parochial institution, or public entity to be designated as a beneficiary, while prohibiting these entities from being designated as an annuity beneficiary, except as specified.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which is administered by the Board of Administration of the Public Employees' Retirement System. PERL generally authorizes the board of administration to adjust retirement payments due to errors or omissions. PERL specifically prescribes a process for adjusting benefits if final compensation at the time of retirement was predicated on compensation that is subsequently disallowed based on the California Public Employees' Pension Reform Act of 2013 or PERS regulations. In this regard, under certain circumstances, the state, a school employer, or a contracting agency that reported contributions on disallowed compensation is required to pay a specified penalty. PERL requires that 90% of

this penalty be paid to the affected retired member, survivor, or beneficiary who was impacted by disallowed compensation and that 10% be paid to PERS.

This bill would require that the entire amount of the above-described penalty be paid to the affected retired member, survivor, or beneficiary and would eliminate the payment to PERS.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions for the purpose of providing pension, disability, and death benefits to county and district employees. CERL vests management of the retirement systems created pursuant to its provisions in a board of retirement.

CERL requires, upon the death of a member, the payment of a retirement allowance earned but not yet paid to a member to be paid to the member's designated beneficiary. CERL requires, upon the death of a person receiving a survivor's allowance, the payment of any allowance earned but not yet paid to the survivor to be paid to the survivor's designated beneficiary.
This bill would include a corporation, a trust, or an estate in the definition of "beneficiary" for purposes of these provisions.

CERL restricts the types of employment for which members may receive credit for service and restricts credit for other employment in public service based upon whether the member is entitled to receive a pension or retirement allowance from another public agency. If a member elects to contribute to obtain credit for other employment in another public agency, CERL requires certification, as specified, of the fact that the pension or retirement allowance will not accrue to the member by virtue of the member's employment.

This bill would specify that the provisions described above do not prohibit a member from receiving credit for a period of federal public service if federal law expressly permits the credit even though the member is already entitled to receive a pension or retirement allowance from that service.

CERL prescribes a process for purposes of establishing a date of retirement with reference to safety members. CERL authorizes a safety member to be retired upon the occurrence of certain events and the filing, with the retirement board, of a written application setting forth the date upon which the member desires their retirement to become effective. CERL prohibits this date from being more than 60 days after the date of filing the application.

This bill would revise the restrictions on the above-described effective retirement date to prohibit the retirement date from being earlier than the date the application is filed with the board or more than 60 days after the date of filing the application or more than a number of days that has been approved by the board.

CERL authorizes the payment of a death benefit upon the death of a member while in service. CERL prescribes the components of the death benefit, which are a

member's accumulated contributions and an amount, provided from contributions by a county or district, calculated pursuant to a specified method, not to exceed 50% of annual compensation earnable or pensionable compensation of the deceased.

This bill would require, in connection with the calculation of the death benefit, that the computation for any absence be based on the compensation of the position held by the member at the beginning of the absence.

This bill would also make nonsubstantive style and technical changes.

5. SB 1338 (Umberg) Community Assistance, Recovery, and Empowerment (CARE) Court Program. (Related to AB 2830)

Status: 09/14/22 Chaptered – Secretary of State – Chapter 319 Statutes of 2022

Per the Legislative Counsel's Digest:

(1) Existing law, the Assisted Outpatient Treatment Demonstration Project Act of 2002, known as Laura's Law, requires each county to offer specified mental health programs, unless a county or group of counties opts out by a resolution passed by the governing body, as specified. Existing law, the Lanterman-Petris-Short Act, provides for short-term and longer-term involuntary treatment and conservatorships for people who are determined to be gravely disabled.

This bill, contingent upon the State Department of Health Care Services developing an allocation to provide financial assistance to counties, would enact the Community Assistance, Recovery, and Empowerment (CARE) Act, which would authorize specified adult persons to petition a civil court to create a voluntary CARE agreement or a court-ordered CARE plan and implement services, to be provided by county behavioral health agencies, to provide behavioral health care, including stabilization medication, housing, and other enumerated services to adults who are currently experiencing a severe mental illness and have a diagnosis identified in the disorder class schizophrenia and other psychotic disorders, and who meet other specified criteria. The bill would require the Counties of Glenn, Orange, Riverside, San Diego, Stanislaus, and Tuolumne and the City and County of San Francisco to implement the program commencing October 1, 2023, and the remaining counties to commence no later than December 1, 2024. The bill would require the Judicial Council to develop a mandatory form for use in filing a CARE process petition and would specify the process by which the petition is filed and reviewed, including requiring the petition to be signed under penalty of perjury, and to contain specified information, including the facts that support the petitioner's assertion that the respondent meets the CARE criteria. The bill would also specify the schedule of review hearings required if the respondent is ordered to comply with an up to one-year CARE plan by the court. The bill would make the

hearings in a CARE Act proceeding confidential and not open to the public, thereby limiting public access to a meeting of a public body. The bill would authorize the CARE plan to be extended once, for up to one year, and would prescribe the requirements for the graduation plan. By expanding the crime of perjury and imposing additional duties on the county behavioral health agencies, this bill would impose a state-mandated local program.

This bill would require the court to appoint counsel for the respondent, unless the respondent has retained their own counsel. The bill would require the Legal Services Trust Fund Commission at the State Bar to provide funding to qualified legal services projects to provide legal counsel in CARE Act proceedings, as specified. The bill would authorize the respondent to have a supporter, as defined. The bill would require the State Department of Health Care Services, in consultation with specified stakeholders, to provide optional training and technical resources for volunteer supporters on the CARE process, community services and supports, supported decision making, and other topics, as prescribed.

This bill would require the California Health and Human Services Agency, or a designated department within that agency, to engage an independent, research-based entity to advise on the development of data-driven process and outcome measures for the CARE Act and to convene a workgroup to provide coordination and support among relevant state and local partners and other stakeholders throughout the phases of county implementation of the CARE Act. The bill also would require the State Department of Health Care Services to provide training and technical assistance to county behavioral health agencies to implement the act and to provide training to counsel, as specified. The bill would require the Judicial Council, in consultation with the department and others, to provide training to judges regarding the CARE process, as specified.

This bill would authorize the court, at any time during the CARE process, if it finds the county or other local government entity not complying with court orders, to report that finding to the presiding judge of the superior court or their designee. If the presiding judge or their designee finds, by clear and convincing evidence, that the local government has substantially failed to comply with the CARE process, the presiding judge may impose a fine of up to $1,000 per day and, if the court finds persistent noncompliance, to appoint a special master to secure court-ordered care for the respondent at the county's cost. The bill would establish the CARE Act Accountability Fund in the State Treasury to receive the fines collected under the Act, which would, upon appropriation, be allocated and distributed by the department to the local government entity that paid the fines to serve individuals who have schizophrenia spectrum or other psychotic disorders who are experiencing or are at risk of homelessness, criminal justice involvement, hospitalization, or conservatorship.

This bill would require the department, in consultation with the Judicial Council, to develop an annual reporting schedule for the submission of CARE Act data from the trial courts and would require the Judicial Council to aggregate the data and submit it to the department. The bill would require the department, in

consultation with various other entities, to develop an annual CARE Act report and would require county behavioral health agencies and other local governmental entities to provide the department with specified information for that report. The bill would require an independent, research-based entity retained by the department to develop an independent evaluation of the effectiveness of the CARE Act and would require the department to produce a preliminary and final report based on that evaluation. By increasing the duties of a local agency, this bill would impose a state-mandated local program.

This bill would exempt a county or an employee or agent of a county from civil or criminal liability for any action by a respondent in the CARE process, except when an act or omission constitutes gross negligence, recklessness, or willful misconduct.

Existing law, the Mental Health Services Act (MHSA), an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the Mental Health Services Fund (MHSF), a continuously appropriated fund, to fund various county mental health programs, including children's mental health care, adult and older adult mental health care, prevention and early intervention programs, and innovative programs.

This bill would clarify that MHSA funds may be used to provide services to individuals under a CARE agreement or a CARE plan.

(2) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires health care service plans and insurers to provide coverage for medically necessary treatment of mental health and substance use disorders. Violation of the Knox-Keene Act by a health care service plan is a crime.

This bill would require health care service plans and insurers to cover the cost of developing an evaluation for CARE process services and the provision of all health care services for an enrollee or insured when required or recommended for the person pursuant to a CARE plan, as specified, without cost sharing, except for prescription drugs, and regardless of whether the services are provided by an in-network or out-of-network provider. Because a violation of this requirement by a health care service plan would be a crime, this bill would impose a state-mandated local program.

(3) Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, with the goal of returning the defendant to competency. Existing law suspends a criminal action pending restoration to competency.

This bill, for a misdemeanor defendant who has been determined to be incompetent to stand trial, would authorize the court to refer the defendant to the CARE process.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) This bill would state that its provisions are severable.

(6) This bill would incorporate additional changes to Section 1370.01 of the Penal Code proposed by SB 1223 to be operative only if this bill and SB 1223 are enacted and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

6. AB 2960 (Committee on Judiciary) Judiciary Omnibus.

Status: 09/18/22 Chaptered – Secretary of State – Chapter 420 Statutes of 2022

Per the Legislative Counsel's Digest:

(1) Existing law, the California Self-Service Storage Facility Act, specifies remedies and procedures for self-service storage facility owners when occupants are delinquent in paying rent or other charges. Under existing law, if rent or other charges due from an occupant remain unpaid for 14 consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a preliminary lien notice by certified mail to the occupant's last known address, defined to mean the address provided by the occupant, as specified. Existing law attaches the lien if the charges remain unpaid by a specified time and allows the owner to take specified actions. At that time, existing law requires the owner to send documentation related to the lien sale to the occupant's last known address, as defined.

Existing law, until January 1, 2023, authorizes the notice and documentation to be sent by electronic mail subject to specified conditions and allows the owner to demonstrate actual delivery and receipt of documents by, among other methods, the occupant acknowledging receipt of the electronic transmission of the notice by executing an electronic signature or by transmitting the notice to the occupant through an application on a personal electronic device.

This bill would remove the January 1, 2023, repeal date and would thereby extend indefinitely the authority to send the notice and documentation by electronic mail and the associated method of demonstrating actual delivery. The bill would make conforming changes.

Existing law, until January 1, 2023, deems the lien to attach if the notice has been sent and the total sum due has not been paid by the termination date specified in the notice. Beginning January 1, 2023, existing law would deem the lien to attach if the notice has been sent and the total sum due has not been paid within 14 days of the specified termination date.

This bill, by removing the January 1, 2023 repeal date, would continue indefinitely the provisions that deem the lien to attach if the total sum due has not been paid by the specified termination date.

(2) Existing law specifies various disclosure requirements applicable to certain transfers of real property. Existing law provides that if information disclosed in accordance with these requirements is subsequently rendered inaccurate as a result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, any inaccuracy resulting therefrom does not constitute a violation of these requirements.

This bill would provide that the disclosure requirements in effect on the date that all of the parties enter into a contract or agreement subject to those requirements are the requirements that apply to that contract or agreement. The bill would also provide that any amendment to those disclosure requirements that becomes effective after the date that the parties enter into a contract or agreement would not alter the disclosure requirements that apply to that contract or agreement.

(3) Existing law defines and regulates data brokers, requiring them to register with the Attorney General pursuant to specified requirements. Existing law prescribes definitions for this purpose, including references to terms defined in the California Consumer Privacy Act of 2018 (CCPA). The California Privacy Rights Act of 2020, approved by the voters as Proposition 24 at the November 3, 2020, statewide general election, amended, added to, and reenacted the CCPA.

This bill would make changes to the definitions relating to data brokers to conform with the changes made by the California Privacy Rights Act of 2020.

(4) Existing law requires a subpoena requiring the attendance of a witness, and a subpoena duces tecum for the production of books, records, documents and other evidence, at an arbitration proceeding or for certain depositions to be issued in a specified manner.

This bill would make technical, nonsubstantive changes to that provision.

(5) Existing law provides that an intangible interest in a business association, as evidenced by the stock or membership records of the association, escheats to the state if, for a period of more than three years, the owner has neither claimed a dividend or other designated sum nor corresponded in writing with the association or otherwise indicated an interest, as specified, and the association does not know the location of the owner at the end of the 3-year period. Existing law requires a person holding funds or other property that escheated to the state to submit a report to the Controller with information about the escheated property.
This bill would exempt the interest that escheats from required reporting unless and until the per share value is equal to or greater than $0.01 or the aggregate value of the security held exceeds $1,000.00, as specified.

(6) Existing law, the Unclaimed Property Law, governs the disposition of unclaimed property, including the escheat of certain property to the state. Existing law requires a person holding funds or other property escheated to the state to report to the Controller certain information regarding the property and the owner. Existing law requires all escheated property delivered to the Controller to be sold by the Controller to the highest bidder at public sale, as specified. Existing law requires securities listed on an established stock exchange be sold at the prevailing prices on that exchange. Existing law authorizes the Controller to sell other securities over the counter at prevailing prices, as specified. Existing law requires the Controller to sell securities no sooner than 18 months, but not later than 20 months, after the final date a person holding funds or other property escheated to the state is required to report to the Controller, as specified.

This bill would instead require the Controller to sell securities no sooner than 18 months, but not later than 20 months, after the actual date of filing of the required report, as specified.

(7) Existing federal law recognizes the sovereignty of federally recognized Indian tribes and provides for financial, developmental, and operational support of tribal justice systems. Under existing law, one or both of the parties to a tribal court proceeding may file an application for recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, that assigns all or a portion of the benefits payable with respect to the plan participant to an alternate payee. Existing law prescribes a filing fee of $100 for a joint application.

This bill would provide that the filing fee applies in cases in which the parties agree to file a joint application as well as in cases in which one of the parties does not agree to join in the application, as specified.

(8) Existing law obligates a parent to support their child. Existing law authorizes a local child support agency, when an order of child support is assigned to the county or the local child support agency is providing child support enforcement services, to issue a notice directing the child support payments to be made to the local child support agency, another county office, or the State Disbursement Unit. Existing law requires the local child support agency to serve this notice on the support obligor and obligee and to file the notice in the action in which the child support order was issued.

This bill would instead require a local child support agency to issue that notice directing that the child support payments be made to the local child support agency, another county office, or the State Disbursement Unit. This bill would also require the local child support agency to provide notice to the obligor, obligee, and the court when it is no longer providing services in accordance with the Social Security Act. This bill would clarify that the local child support agency is required to comply with the Code of Civil Procedure when serving notice.

Existing law also authorizes the Department of Child Support Services or the local child support agency, upon request from the support enforcement agency of another state where a custodial party has either assigned the right to receive support or has requested support enforcement services, to issue a notice to change a payee on an issued support order. Existing law requires the notice of the administrative change of payee to be filed with the court in which the order was issued or last registered.

This bill would require the department or the local child support agency to issue a notice to change a payee on an issued support order.
Because the bill would require local agencies to perform additional duties, it would impose a state-mandated local program.

(9) Existing law permits a petitioner to seek a restraining order to protect against domestic violence or gun violence. Existing law requires, by July 1, 2023, a court or court facility that receives petitions for domestic violence restraining orders or gun violence restraining orders to permit those petitions to be filed electronically. Existing law also permits parties and witnesses to appear remotely at a hearing on a petition for a gun violence restraining order or domestic violence restraining order. Existing law requires the superior court of each county to provide telephone numbers for the public to call to obtain information regarding electronic filing and remote appearances, respectively. Existing law requires the superior court of each county to develop, and to post on its internet website, local rules and instructions for electronic filing and remote appearances, respectively.

This bill, commencing July 1, 2023, would revise those provisions to instead require a court or court facility that receives petitions for domestic violence or gun

violence restraining orders to permit the petitions and related filings to be submitted electronically and acted upon in accordance with specified procedures. The bill would require the request, notice of the court date, copies of the request to serve on the respondent, and the temporary restraining order, if granted, to be provided to the petitioner electronically, unless the petitioner notes that the documents will be picked up from the court or court facility, as specified. The bill would require information regarding electronic filing and access to the court's self-help center to be displayed on the court's homepage, as specified. The bill would retain the requirement for courts to develop and post local rules and instructions only with respect to remote appearances, and would authorize the Judicial Council to adopt or amend rules and forms to implement these electronic filing provisions.

(10) Existing law, the Uniform Parentage Act, governs actions to determine a parent and child relationship, including when the pregnant person conceives through assisted reproduction. Existing law authorizes a local child support agency to secure child support and to establish paternity, among other duties. Existing law also provides that a hearing or trial under the act filed on or before January 1, 2023, may be held in closed court, and all papers and records, other than the final judgment, pertaining to the action or proceeding are subject to inspection only in exceptional cases upon an order of the court for good cause shown. If a hearing or trial is held in closed court under the act, existing law requires the papers and records pertaining to that proceeding to be part of the permanent record of the court and subject to inspection by the parties to the action and their attorneys, pursuant to written authorization, and by a local child support agency, as specified. Existing law further authorizes an action to establish a parent-child relationship for a child conceived pursuant to an assisted reproduction agreement for gestational carriers to be filed before the child's birth in a specified county, including where the child is anticipated to be born or the county where the intended parent or parents reside.

This bill would clarify that the provisions regarding a closed court action and the access to records under the act apply only to those actions filed before January 1, 2023. The bill would further provide that those closed court action and limited access to records provisions continue to apply to a child conceived through assisted reproduction or a child conceived pursuant to an assisted reproduction agreement for gestational carriers, regardless of when the action was filed. The bill would require the Judicial Council to create a new form or modify an existing form, as it deems appropriate, to require a party regarding a child conceived by assisted reproduction or assisted reproduction for gestational carriers to designate the action or proceeding as being an assisted reproduction filing, as specified. The bill would continue to authorize the parties and their attorneys, and a local child support agency, to access the permanent record of the court regarding assisted reproduction actions, as specified.

(11) Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Civil Rights Department within the Business, Consumer Services, and Housing Agency under the direction of the Director of Civil Rights and sets forth its powers and duties relating to the enforcement of civil rights laws with

respect to housing and employment, including, among others, the authority to provide assistance to communities and persons in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on specified characteristics that impair the rights of persons in those communities under the Constitution or laws of the United States or of this state. Existing law limits the availability of those services to circumstances in which peaceful relations among the citizens of the community involved are threatened. This bill would, instead, limit the availability of those services to circumstances in which peaceful relations among the persons of the community involved are threatened.

Existing law establishes the Civil Rights Council within the Civil Rights Department and gives the council certain functions, powers, and duties, including, among others, to create or provide technical assistance to advisory agencies and conciliation councils to aid in effectuating the purposes of the FEHA, to empower them to study the problems of discrimination, to foster good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the Civil Rights Council for the development of certain policies and procedures, as specified.

Existing law requires these advisory agencies and conciliation councils to be composed of representative citizens.

This bill would, instead, require those agencies and councils to be composed of representative persons.

The bill would make clarifying changes relating to the functions, powers, and duties of the council.

(12) Existing law, the FEHA, makes certain discriminatory employment practices unlawful, and authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a verified complaint with the Civil Rights Department. The FEHA requires the department to make an investigation in connection with a filed complaint alleging facts sufficient to constitute a violation of the FEHA, and requires the department to endeavor to eliminate the unlawful practice by conference, conciliation, and persuasion. If conference, conciliation, mediation, or persuasion fails and the department has required all parties to participate in a mandatory dispute resolution, as specified, the FEHA authorizes the director to bring a civil action in the name of the department on behalf of the person claiming to be aggrieved within a specified amount of time. Existing law establishes deadlines for bringing such a civil action, depending on the type of complaint. These deadlines are tolled during a mandatory or voluntary dispute resolution proceeding commencing on the date the department refers the case to its dispute resolution division and ending on the date the department's dispute resolution division closes its mediation record and returns the case to the division that referred it.

The FEHA requires the department, if such a civil action is not brought by the department within 150 days after the filing of a complaint, or if the department earlier determines that no civil action will be brought, to promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on request, the right-to-sue notice, or, if not requested, upon completion of its investigation, and not later than one year after the filing of the complaint. In the case of group or class complaints, the FEHA requires the department to issue a right-to-sue notice upon completion of its investigation, and not later than 2 years after the filing of the complaint.

This bill would toll these right-to-sue notice deadlines during a mandatory or voluntary dispute resolution proceeding commencing on the date the department refers the case to its dispute resolution division and ending on the date the department's dispute resolution division closes its mediation record and returns the case to the division that referred it.

(13) Existing law, the FEHA, prohibits discrimination in housing based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the covenant is repealed or void. Existing law also provides that a provision in any deed of real property in California that purports to restrict the right of any person to sell, lease, rent, use, or occupy the property to persons having the characteristics specified above by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void, except as specified.

Existing law authorizes a person who holds an ownership interest of record in property that they believe is the subject of an unlawfully restrictive covenant, as specified, to record a Restrictive Covenant Modification, which is required to include a copy of the original document with the illegal language stricken. Existing law, subject to authorization from the county's board of supervisors, authorizes a county recorder to impose a fee of $2 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded for the purpose of funding the restrictive covenant programs, except as specified.

This bill would correct erroneous cross-references in these provisions and make other nonsubstantive changes.

(14) Existing law requires the California Commission on Disability Access to report to the Legislature its ongoing efforts, to implement specified law, annually, on or before January 31. Existing law also requires the commission to make an annual report to the Legislature of tabulated data relating to the various types of construction-related physical access violations alleged in demand letters and complaints by January 31 of each year.

This bill would instead require these reports to be made annually by March 31.

(15) Existing law, the Guardianship-Conservatorship Law, generally establishes the standards and procedures for the appointment and termination of an appointment for a guardian or conservator of a person, an estate, or both. Existing law requires the court to appoint the public defender or private counsel to represent interests of a conservatee, proposed conservatee, or person alleged to lack legal capacity who is unable to retain legal counsel and requests the appointment of legal counsel. Existing law gives the proposed conservatee the right to choose and be represented by legal counsel and the right to have the court appoint legal counsel if the person is unable to retain legal counsel.

This bill would require the court to appoint legal counsel if the conservatee, proposed conservatee, or person alleged to lack legal capacity is not represented by legal counsel and does not plan to retain legal counsel. The bill would give the proposed conservatee the right to have the court appoint legal counsel if the person is not otherwise represented by legal counsel.

(16) Existing law specifies the information required on the form petitioning for the appointment of a conservator, including the location of the proposed conservatee's residence and alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available. This bill would require the petition to include the location and nature of the proposed conservatee's residence and why the considered alternatives to conservatorship were not suitable.

(17) Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law generally authorizes the revocation of a trust when the person holding the power to revoke the trust is competent. Existing law provides that if no person holding the power to revoke the trust is competent during the time that a trust is revocable, the trustee is required to provide specified notice to each beneficiary within 60 days of obtaining information establishing the incompetency of the last person with the power to revoke the trust. Existing law authorizes the trustee to rely on specified methods to establish incompetency.

This bill would clarify that the trustee is required to provide the above-described notice within 60 days of receiving information establishing the incompetency of the last person with the power to revoke the trust, and would provide that incompetency may be established by specified methods.

(18) Existing law authorizes the juvenile court to adjudge a child to be a dependent child of the court or a minor to be a ward of the court under specified circumstances, including, among others, there is a substantial risk that the child will suffer serious physical harm inflicted nonaccidentally. Existing law requires the juvenile court in these proceedings to inquire whether a child is or may be an Indian child, and, if so, the federal Indian Child Welfare Act of 1978 requires,

among other things, the notification of the proceedings to the Indian child's tribe. Existing law requires the Judicial Council to adopt rules of court to allow for telephonic or other remote appearance options by an Indian child's tribe in these proceedings. Existing law prohibits telephonic or other computerized remote access for court appearances from being subject to fees.

This bill would make a clarifying change regarding the prohibition on fees being charged for telephonic or other computerized remote access for court appearances.

(19) This bill would incorporate additional changes to Section 12931 of the Government Code proposed by SB 523 to be operative only if this bill and SB 523 are enacted and this bill is enacted last.

(20) This bill would incorporate additional changes to Section 1821 of the Probate Code proposed by AB 1663 to be operative only if this bill and AB 1663 are enacted and this bill is enacted last.

(21) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

7. SB 1495 (Committee on Business, Professions and Economic Development) Professions and vocations.

Status: 09/23/22 Chaptered – Secretary of State – Chapter 511 Statutes of 2022

Per Legislative Counsel's Digest:

(1) Chapter 143 of the Statutes of 2021 renamed the Office of Statewide Health Planning and Development as the Department of Health Care Access and Information, and requires any reference to the office to be deemed a reference to the department.

This bill would update the name of the department in provisions relating to healing arts that reference the office.

(2) Existing law, the Dental Practice Act, establishes the Dental Hygiene Board of California within the Department of Consumer Affairs for the licensure and regulation of dental hygienists. Under existing law, a licensee is required, as a condition of license renewal, to submit, and certify under penalty of perjury, assurances satisfactory to the board that they will, during the succeeding 2-year period, inform themselves of the developments in the practice of dental hygiene occurring since the original issuance of their licenses, as specified.

Under this bill, the assurances required as a condition of license renewal would be that the licensee had, during the preceding 2-year period, informed themselves of those developments, as specified. By changing what assurances a licensee is required to submit to the board, the bill would expand the scope of the crime of perjury, thereby imposing a state-mandated local program.

(3) Existing law, the Physician Assistant Practice Act, establishes the Physician Assistant Board for the licensure and regulation of physician assistants. Existing law creates the Physician Assistant Fund and makes all money in the fund available, upon appropriation of the Legislature, to carry out the provisions of the act. Existing law requires the Medical Board of California to report to the Controller the amount and source of all collections made under the act and to pay all those sums into the State Treasury, where they are required to be credited to the fund. Chapter 649 of the Statutes of 2021 removed the provision that placed the Physician Assistant Board within the jurisdiction of the Medical Board of California.

This bill would remove those reporting and payment requirements from the Medical Board of California, and would, instead, impose them on the Physician Assistant Board.

Chapter 332 of the Statutes of 2012, among other things, renamed the Physician Assistant Committee as the Physician Assistant Board.

This bill would update the name of the Physician Assistant Board in provisions relating to healing arts that reference the board.

(4) Existing law, the Veterinary Medicine Practice Act, establishes the Veterinary Medical Board in the Department of Consumer Affairs for the licensure and regulation of veterinarians. Existing law requires a licensee to biennially apply for renewal of their license, and requires the board to issue renewal to those applicants that have completed a minimum of 36 hours of continuing education in the preceding 2 years. Existing law generally requires continuing education hours to be earned by attending courses relevant to veterinary medicine and sponsored or cosponsored by certain entities.

This bill would delete an obsolete provision relating to continuing education hours earned by attending courses sponsored or cosponsored by those entities between January 1, 2000, and January 1, 2001.

The Veterinary Medicine Practice Act authorizes the board to deny, revoke, or suspend a licensee or registrant or assess a fine if a licensee or registrant makes a statement, claim, or advertisement that they are a veterinary specialist or board certified unless they are certified by a specified organization.
This bill would add an additional organization to certify a licensee or registrant for this purpose.

(5) Existing law establishes the Board of Behavioral Sciences within the Department of Consumer Affairs, and requires the board to regulate various registrants and licensees under prescribed acts, including the Licensed Marriage and Family Therapist Act, the Clinical Social Worker Practice Act, the Licensed Professional Clinical Counselor Act, and the Educational Psychologist Practice Act. Under the Licensed Marriage and Family Therapist Act, the Clinical Social Worker Practice Act, and the Licensed Professional Clinical Counselor Act, applicants for licensure are required to complete a certain amount of supervised experience and direct supervisor contact. Existing law defines "supervisor" for purposes of those acts to mean an individual who meets certain requirements, including, among others, having, for at least 2 years within the 5-year period immediately preceding any supervision, practiced psychotherapy, provided psychological counseling pursuant to a provision of the Educational Psychologist Practice Act, or provided specified direct clinical supervision of psychotherapy.

This bill would correct erroneous cross-references to the provision of the Educational Psychologist Practice Act mentioned above.

(6) Existing law requires applicants for licensure as a marriage and family therapist, an educational psychologist, a clinical social worker, or a professional clinical counselor to submit to the appropriate licensing board a written certification showing that they have completed a minimum of 6 hours of coursework or applied experience under supervision in suicide risk assessment and intervention. Existing law requires that, as a one-time requirement, these licensees, before the time of their first renewal after January 1, 2021, or upon application for reactivation or reinstatement to an active license status on or after January 1, 2021, complete prescribed coursework or applied experience under supervision in suicide risk assessment and intervention. Existing law requires that the proof of compliance with these provisions be certified under penalty of perjury and retained for submission to the board upon request.

This bill would clarify that proof of compliance with the one-time requirement to complete the coursework or applied experience, before the time of the first license renewal, or upon reactivation or reinstatement to an active license status, is required to be certified under penalty of perjury and retained for submission to the board upon request.

(7) Existing law, the Geologist and Geophysicist Act, requires the Board for Professional Engineers, Land Surveyors, and Geologists, which is within the Department of Consumer Affairs, to administer its provision relating to the licensure and regulation of geologists and geophysicists. Existing law requires an applicant for certification as a geologist-in-training to meet certain requirements, including either of 2 education requirements fulfilled at a school or university whose curricula whose curricula meet criteria established by the board.

Under the bill, the board would not be required to verify an applicant's eligibility for certification as a geologist-in-training except that an applicant for certification as a geologist-in-training would be required to sign or acknowledge a statement of

eligibility at the time of submission of the application attesting to the completion of the above-described education requirements and the rules of the board. By requiring an applicant to submit an attestation to the board, the bill would expand the scope of the crime of perjury, thereby imposing a state-mandated local program.

(8) Existing federal law, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"), encourages states to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, as specified.

Existing state law, the Real Estate Law, governs the licensing and regulation of real estate licensees, as defined, as administered by the Real Estate Commissioner. Existing law, the California Residential Mortgage Lending Act, regulates the business of making residential mortgage loans and servicing residential mortgage loans, and prohibits a person from engaging in these activities without first obtaining a license from the Commissioner of Financial Protection and Innovation. Existing law, the California Financing Law, provides for the licensure and regulation of finance lenders, brokers, and specified program administrators by the Commissioner of Financial Protection and Innovation.

Existing law requires certain licensees under the Real Estate Law, the California Financing Law, and the California Residential Mortgage Lending Act, including mortgage loan originators, to also be licensed and registered through, and regulated by, the Nationwide Mortgage Licensing System and Registry. Existing law requires the Real Estate Commissioner and the Commissioner of Financial Protection and Innovation to regularly report violations of specified state law provisions implementing the SAFE Act and specified enforcement actions to the Nationwide Mortgage Licensing System and Registry. Existing law authorizes those commissioners to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process certain fees.

This bill would instead refer to the Nationwide Mortgage Licensing System and Registry in the provisions of the Real Estate Law as the "Nationwide Multistate Licensing System and Registry."

Existing law requires an applicant for an original real estate broker license examination to successfully complete courses of study in specified subjects, including real estate practice and legal aspects of real estate. Existing law also requires an applicant for a real estate salesperson license examination or for both the examination and license to successfully complete courses of study in specified subjects, including real estate principles and real estate practice. Existing law, beginning January 1, 2023, revises the real estate practice course for an applicant for a real estate broker or salesperson license to include a component on implicit bias, as specified, and revises the legal aspects of real estate course for that

applicant to include a component on state and federal fair housing laws, as specified.

This bill would include the component on state and federal fair housing laws in the real estate practice course instead of the legal aspects of real estate course, and would further delay the revision to the real estate practice course until January 1, 2024. The bill would make clarifying changes to the educational requirement provisions.

(9) Under existing law, the Department of Food and Agriculture has general supervision of the weights and measures and weighing and measuring devices sold or used in the state. Existing law authorizes the department to establish criteria and procedures for certification of laboratories to perform measurement services that are determined by the Secretary of Food and Agriculture to be beyond the existing equipment capabilities of the department, or when warranted by financial or workload considerations.

Existing law requires that the state standards of weights and measures by which all state and county standards of weights and measures are required to be tried, proved, and sealed include, among other specified standards, metrological standards in the possession of laboratories certified to perform measurement services pursuant to the above-described law.

This bill would update the cross-reference to the law governing certification of laboratories to perform measurement services in the above-described provision.

(10) Existing law, the Professional Fiduciaries Act, created the Professional Fiduciaries Bureau in the Department of Consumer Affairs and requires the bureau to license and regulate professional fiduciaries, as specified. Existing law requires the bureau to maintain specific records concerning its licensees on file, including the names of trusts and decedent's estates currently administered by the licensee and the case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative. Existing law also requires that the bureau maintain information on whether the licensee has ever resigned as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, in a specific case.

This bill would specify that the bureau is required to maintain the above-described information relating to the names of trusts and decedent's estates currently administered by a licensee and the case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative regardless of whether the case is court supervised or court appointed. The bill would also require that the bureau maintain the case names, court locations, and case numbers of conservatorships, guardianships, or

trusts or other estate administration cases that are closed for which the licensee served as agent under durable power of attorney for finance or health care. The bill would also require that the bureau maintain information on whether the licensee has settled a matter in which a complaint has been filed with the court in a specific case.

Existing law provides that a license issued under the Professional Fiduciaries Act expires one year after it was issued on the last day of the month in which it was issued and authorizes a licensee to renew a license, as provided. Existing law requires that a licensee complete 15 hours of approved continuing education courses each year, including at least two hours in ethics or cultural competency, as specified, in order to renew a license or restore a license from retired status to active status.

This bill would, instead, require that the above-described 15 hours of approved continuing education courses, as specified, be completed each annual renewal cycle.

Existing law requires licensees under the Professional Fiduciaries Act to maintain client records and to make those records available for audit by the bureau. This bill would specify that a licensee is required to make client records available for audit or review by the bureau upon request.

Existing law requires licensees under the Professional Fiduciaries Act to annually submit to the bureau a statement under penalty of perjury containing specified information, including the case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.

This bill would, instead, require that the above-described statement include the case names, court locations, and case numbers of all conservatorship, guardianship, trust, and other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, agent under a durable power of attorney for finance or health care, and personal representative of a decedent's estate. The bill would additionally require that the annual statement include the names of the licensee's current conservatees, wards, principals under a durable power of attorney for health care, or principals under a durable power of attorney for finances, and the names of trusts and decedent's estates currently administered by the licensee, as provided. By requiring that a licensee provide this information under penalty of perjury, the bill would impose a state-mandated local program.

(11) Existing law, the Private Investigator Act, provides for the licensure and regulation of private investigators and makes violations of those provisions a crime. Existing law requires limited liability companies licensed as private investigators to maintain an insurance policy against liability imposed against it arising out of the private investigator services it provides and requires the licensee to report any paid or pending claim against its insurance to the Bureau of Security and Investigative Services. Existing law requires the bureau to post a notice of the

claim on the Department of Consumer Affairs BreEZe License Verification internet webpage.

This bill would instead require the licensee to report annually, no later than March 1, the date and amount of any claim paid during the prior calendar year. The bill would require the bureau to create a form for that purpose, and would remove the requirement that the bureau post a notice of the claim. Because a violation of these provisions is a misdemeanor, the bill would impose a state-mandated local program by expanding the scope of a crime.

(12) Existing law, the Private Security Services Act, provides for the licensure and regulation of private security services, including private patrol operators. Existing law requires security guards to carry a security guard registration card while on duty and carry a firearms permit while carrying a firearm on duty, except as specified. Existing law requires a security guard, who in the course of business or employment carries a firearm, to take a course in the power to arrest and, on and after January 1, 2023, a course in the appropriate use of force. Existing law requires an applicant to pay a $10 certification fee for the replacement of a certified firearms qualification card.

This bill would repeal the requirement that the applicant pay a $10 certification fee and would instead require the applicant to pay a fee as otherwise prescribed for the replacement of a certified firearms qualification card.

Existing law authorizes the Director of Consumer Affairs to require a licensed private patrol operator to suspend a security guard from employment if the director determines they may present an undue hazard to the public safety. This bill would repeal that provision.

(13) Existing law, the Automotive Repair Act, provides for the registration and regulation of automotive repair dealers by the Bureau of Automotive Repair in the Department of Consumer Affairs. Existing law requires the Director of Consumer Affairs to issue vehicle safety systems inspection licenses to stations and technicians to conduct inspections of, and repairs to, safety systems of vehicles. Existing law requires the director to develop inspection criteria and standards for specific safety systems and to adopt regulations as specified, including to develop a certification process for vehicles and a form for a certificate of compliance that contains, among other things, the name of the owner of the vehicle.

This bill would remove the requirement that the form contain the name of the owner of the vehicle.

(14) Existing law, the Contractors State License Law, establishes the Contractors State License Board within the Department of Consumer Affairs and sets forth its powers and duties relating to the licensure and regulation of contractors. Existing law establishes the Solar Energy System Restitution Program for the purpose of providing restitution to certain consumers with a solar energy system installed by a contractor on a single-family residence, as specified. Existing law requires the

board to display a notice, as specified, that a licensee was the subject of a payment from the program if the licensee caused a payment of an award to a consumer pursuant to the program.

This bill would specify that the board is required to display this notice for a licensee whose license is revoked or pending revocation and who caused a payment of an award to a consumer pursuant to the program.

(15) Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services under the supervision and control of the Director of Consumer Affairs.

This bill would remove an obsolete reference in the act.

This bill would additionally make various nonsubstantive changes in the above-mentioned provisions.

(16) Existing law requires real estate licensees to complete at least one hour of instruction in cultural competency every four years in connection with the process and procedures for renewal of a license or restoration of a license to active status. This bill would make conforming changes to the definition of cultural competency.

(17) Existing law requires the registrant of a fictitious business name to cause a specified statement to be published in a newspaper of general circulation within 30 days after the fictitious business name statement was filed. Existing law requires an affidavit showing the publication of the statement to be filed with the county clerk where the fictitious business name statement was filed within 30 days after completion of the publication.

This bill would, instead, require the statement to be published within 45 days after the fictitious business name statement was filed and require the affidavit showing the publication to be filed within 45 days after completion of the publication.

(18) This bill would incorporate additional changes to Section 3502.4 of the Business and Professions Code proposed by AB 2626 to be operative only if this bill and AB 2626 are enacted and this bill is enacted last.

(19) This bill would incorporate additional changes to Section 4883 of the Business and Professions Code proposed by AB 1885 to be operative only if this bill and AB 1885 are enacted and this bill is enacted last.

(20) This bill would incorporate additional changes to Sections 6534 and 6561 of the Business and Professions Code proposed by SB 1024 to be operative only if this bill and SB 1024 are enacted and this bill is enacted last.

(21) This bill would incorporate additional changes to Section 7520.3 of the Business and Professions Code proposed by SB 1443 to be operative only if this bill and SB 1443 are enacted and this bill is enacted last.

(22) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement

8. SB 1227 (Eggman) Involuntary commitment: intensive treatment.

Status: 09/27/22 Chaptered – Secretary of State – Chapter 619 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment and treatment of persons with specified mental disorders for the protection of the persons committed. Under the act, when a person, as a result of a mental health disorder, is a danger to others, or to themselves, or gravely disabled, the person may, upon probable cause, be taken into custody and placed in a facility designated by the county and approved by the State Department of Health Care Services for up to 72 hours for evaluation and treatment. Under existing law, if a person is detained for 72 hours under those provisions, and has received an evaluation, the person may be certified for not more than 14 days of intensive treatment, as specified. Existing law further authorizes a person to be certified for an additional period of not more than 30 days of intensive treatment if the person remains gravely disabled and is unwilling or unable to accept treatment voluntarily. Existing law requires the person to be released at the end of the 30 days, except under specified circumstances, including, but not limited to, when the patient is subject to a conservatorship petition filed pursuant to specified provisions. Existing law requires an evaluation to be made when a gravely disabled person may need to be detained beyond the initial 14-day period, as to whether the person is likely to qualify for appointment of a conservator, and, if so, requires that referral to be made, as specified.

This bill would authorize the professional person in charge of the facility providing intensive treatment to the person to file a petition in the superior court for the county in which the facility is located, seeking approval for up to an additional 30 days of intensive treatment. The bill would require the petition to be filed after 15 days of the first 30-day period, but at least 7 days before expiration of the 30 days. The bill would require reasonable attempts to be made by the facility to notify family members or any other person designated by the patient of the time and place of the judicial review, unless the patient requests that the information not be provided. The bill would require the facility treating the patient to advise the patient of the patient's right to request that the information not be provided.

The bill would require the court to either deny the petition or order an evidentiary hearing to be held within 2 court days after the petition is filed. The bill would authorize the court to order the person to be held for up to an additional 30 days

of intensive treatment if, at the evidentiary hearing, the court makes specified findings, based on the evidence presented, including a finding that the person, as a result of mental disorder or impairment by chronic alcoholism, is gravely disabled. The bill would require the person to be released no later than the expiration of the original 30-day period if the court does not make all of the required findings. The bill also would make conforming changes to the evaluation requirements for determining whether the patient is likely to qualify for appointment of a conservator.

9. AB 1726 (Aguiar-Curry) Address confidentiality program.

Status: 09/28/22 Chaptered – Secretary of State – Chapter 686 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law establishes an address confidentiality program, commonly known as the Safe at Home program, for victims of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse, under which an adult person, or a guardian on behalf of a minor or an incapacitated person, states that they are such a victim, and designates the Secretary of State as the agent for service of process and receipt of mail. Under existing law, when the Secretary of State certifies the person as a program participant, the person's actual address is confidential.

Existing law relating to civil procedure requires written notice and establishes deadlines for serving and filing moving and supporting papers for prescribed motions and for serving notices and other papers, if served by mail. Existing law extends the period of notice in certain circumstances based on the location of the place of mailing or the place of address, or both.

This bill would extend those periods by 12 calendar days if the place of address is the address confidentiality program.

Under existing law relating to summary proceedings, a plaintiff that wishes to bring an action to obtain possession of real property must file a complaint and serve the defendant with a notice of summons, in which case the defendant has 5 days to respond.

This bill would give the defendant an additional 5 court days to file a response, if service is completed by mail or in person through the address confidentiality program.

Existing law requires the Secretary of State to approve an application for the address confidentiality program if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains specific information, including the name and last known address of the applicant's minor child or

children, the name and last known address of the other parent or parents of the minor child or children of the applicant, and all court orders related to the minor child or children of the applicant, and legal counsel of record in those cases.

This bill would revise that information requirement to require the name and last known address of the applicant's minor child or children and the name and last known address of the other parent or parents as legally established by prescribed legal methods. The bill would authorize this section to be left blank if no other parent has been established for the applicant's minor child or children.

Existing law authorizes the Secretary of State to terminate a program participant's certification and invalidate their authorization card for specified reasons, including that the program participant no longer resides at the most recent residential address provided to the Secretary of State, and has not provided at least 7 days' prior notice in writing of a change in address, that a service of process document or mail forwarded to the program participant by the Secretary of State is returned as nondeliverable, or that the program participant obtains a legal name change and fails to notify the Secretary of State within 7 days.

This bill would extend the 7-day notice requirement for the most recent residential address to 30 days. The bill would require the program, before terminating a program participant's certification due to nondeliverable mail, to attempt to contact the participant by phone and email, if available, to resolve the mail delivery issue. The bill would extend the legal name change notice deadline to 30 days.

Existing law authorizes the Secretary of State to refuse to renew a program participant's certification if the adult program participant or the parent or guardian acting on behalf of a minor or incapacitated person has abandoned their domicile in this state.

This bill, if the program participant or parent or guardian acting on behalf of a minor or incapacitated person leaves the state during their valid participation term, would prohibit them from being terminated on the grounds of having abandoned their domicile in this state until they have resided outside of this state for a period of more than 60 consecutive days, if relocating to a state with an address confidentiality program. The bill would require, if the program participant or parent or guardian acting on behalf of a minor or incapacitated person has relocated to a state without an address confidentiality program, that they remain enrolled and mail be forwarded for the remainder of their certification term.

Existing law prohibits any person, business, or association from knowingly and intentionally publicly posting or publicly displaying on the internet prescribed personal information or images with the intent to incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm, or with the intent to threaten the person identified in the posting or display, or a

coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for their personal safety.

This bill would expand the prohibition to also apply to other posting or displaying entities and to posts or displays in public spaces other than the internet. The bill, with respect to the intent to threaten, would provide that disclosure alone may be considered a threat, depending on the totality of the circumstances.

Existing law prohibits a person, business, or association from soliciting, selling, or trading on the internet the home address, home telephone number, or image of a participant with the intent to incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm, or with the intent to threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for their personal safety.

This bill would expand that prohibition to also apply to other entities and other forums besides the internet.

Existing law prohibits a person from posting specified personal information of a participant or participating family members on the internet, with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against the participant or the program participant's family members who are participating in the program. A violation of this prohibition is a misdemeanor, punishable as prescribed.

This bill would expand the prohibition to apply to public spaces other than the internet. The bill would expand the prohibited intent to include the use of the information to intimidate the participant or participating family members. By expanding the application of this prohibition, the violation of which is a crime, this bill would impose a state-mandated local program.

Existing law provides that neither existing law nor participation in the program affects custody or visitation orders in effect before or during program participation. Existing law further provides that participation in the program does not constitute evidence of domestic violence, stalking, sexual assault, human trafficking, or elder or dependent adult abuse for purposes of making custody or visitation orders.

This bill would provide that the fact that a participant is registered with the program creates a rebuttable presumption that disclosure of information about the participant's location and activities during the period of the registration, as specified, would lead to the discovery of the participant's actual residential address or physical location, would endanger the safety of the participant, and is not authorized. The bill would authorize this presumption to be rebutted by clear and convincing evidence, as prescribed, and would require this presumption to govern civil discovery requests. The bill would prohibit a participant from being required to provide in discovery their residential address or other location information

reasonably likely to lead to the discovery of these addresses unless ordered to do so by a court after the other party has rebutted the presumption against disclosure of this information.

This bill would prohibit certification as a program participant from being evidence that minor children in the participant's custody are at-risk in the participant's care.

This bill would incorporate additional changes to Sections 6206 and 6206.7 of the Government Code proposed by AB 2872 to be operative only if this bill and AB 2872 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

10. SB 1279 (Ochoa Bogh) Guardian ad litem appointment.

Status: 9/29/22 Chaptered – Secretary of State – Chapter 843 Statutes of 2022

Per Legislative Counsel's Digest:

(1) Existing law authorizes a court to appoint a guardian ad litem at any stage of a proceeding under the Probate Code to represent the interest of specified persons, including a minor or an incapacitated person, if the court determines that representation of their interest otherwise would be inadequate.
This bill would add a person who lacks the legal capacity to make a decision to that list of specified persons. The bill would require a proposed guardian ad litem to disclose to the court and all interested persons any known potential or actual conflicts of interest arising from appointment.

(2) Existing law requires a party to a civil action who is a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed to appear in the action either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court, except as specified. Existing law authorizes the court to appoint a guardian ad litem in any case when the court deems it expedient, even notwithstanding that the person may have a guardian of the estate or conservator of the estate and may have appeared by the guardian of the estate or conservator of the estate.
With respect to the appointment of guardians, this bill would replace the term "person lacking legal competence to make decisions" with the term "person who lacks legal capacity to make decisions," as defined. The bill would require notice and a copy of a guardian ad litem application for a person who already has a

guardian or conservator of the estate to be provided to the guardian or conservator of the estate, as prescribed.

The bill would give the guardian or conservator of the estate 5 court days from receiving notice of the application to file an opposition to the application. The bill would require a proposed guardian ad litem to disclose to the court and all interested persons any known potential or actual conflicts of interest arising from appointment, and any familial or affiliate relationship with any of the parties.

11. SB 233 (Umberg) Civil actions: appearance by telephone.

Status: 09/30/22 Chaptered – Secretary of State – Chapter 979 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law authorizes a party who has provided notice to appear by telephone at specified conferences, hearings, or proceedings in civil cases. Existing law requires the Judicial Council to adopt rules effectuating those policies and provisions. Existing law also requires the Judicial Council to establish statewide, uniform fees to be paid by a party for appearing by telephone.

Existing law requires the Judicial Council to enter into one or more master agreements with a vendor or vendors to provide for telephone appearances in civil cases pursuant to the above-described provisions. Existing law requires a portion of the fees collected by vendors or courts providing for appearances by telephone to be transmitted to the State Treasury for deposit in the Trial Court Trust Fund. Existing law requires the Judicial Council to determine the method and amount of allocation to eligible courts, as specified.

This bill would repeal those provisions.

12. AB 1663 (Maienschein) Protective proceedings.

Status: 09/30/22 Chaptered – Secretary of State – Chapter 894 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law, the Guardianship-Conservatorship Law, generally establishes the standards and procedures for the appointment of, and termination of an appointment for, a guardian or conservator of a person, an estate, or both. Under existing law, a court may appoint the Director of Developmental Services as guardian or conservator of the person and estate, or person or estate, of a developmentally disabled person, in which case a specified order of preferences for deciding between equally qualified prospective conservators does not apply. Existing law authorizes the director to have these conservatorship duties

performed through a regional center, or an agency or individual designated by the regional center, as specified.

This bill would revise various procedures in the conservatorship process. Among other provisions, the bill would provide that, when equally qualified as other potential conservators, the conservatee's preference and the prior conservator's preference, to a prescribed extent, should prevail. For petitions filed after January 1, 2023, the bill would prohibit a regional center from acting as a conservator but would authorize the regional center to act as a designee of the director, as specified. The bill would require the Director of Developmental Services to develop guidelines to mitigate conflicts that may arise when a regional center is acting as designee while at the same time providing service coordination activities to the same person. The bill would also require the petition for conservatorship to include alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not suitable, alternatives tried by the petitioner or proposed conservators, if any, and the reasons why those alternatives do not meet the conservatee's needs.

This bill would require the court to provide conservators with written information concerning the conservator's obligations to support the conservatee. The bill would require the court, within 30 days of the establishment of a conservatorship and annually thereafter, to provide conservatees under the court's jurisdiction with written information regarding their rights, including a personalized list of the rights the conservatee retains. The bill would expand the annual duties and reporting requirements of court investigators conducting required visits to assess the progress of the conservatorship. The bill would revise the procedures for termination of a limited conservatorship by requiring the court to terminate an uncontested petition for termination under specified circumstances, and without a hearing.

The bill, upon appropriation, would require the Judicial Council to establish a conservatorship alternatives program within each self-help center in each superior court. Among other goals, the conservatorship alternatives program would provide information relating to less restrictive alternatives to conservatorship. The bill would designate the duties of court staff reviewing petitions under the conservatorship alternatives program.

Existing law requires the Judicial Council to adopt a rule of court that specifies educational requirements for staff attorneys, examiners, investigators, and attorneys appointed as legal counsel in guardianship and conservatorship cases, as well as judges who are regularly assigned to hear probate matters.
This bill would require the Judicial Council to include the less restrictive alternatives to conservatorship in the required subject matter to meet those educational requirements.

The bill would establish a supported decisionmaking process and a process for entering into a supported decisionmaking agreement for adults with disabilities, as defined. The bill would define "supported decisionmaking" as an individualized

process of supporting and accommodating an adult with a disability to enable them to make life decisions without impeding the self-determination of the adult. The bill would authorize an adult with a disability to request and have present one or more adults, including supporters, in any meeting or communication. The bill would set forth the duties of supporters and would specify the elements of a written supported decisionmaking agreement, if one is used.

13. AB 2216 (Irwin) The Qualified ABLE Program: tax-advantaged savings accounts.

Status: 09/30/22 Chaptered – Secretary of State – Chapter 896 Statutes of 2022

Per Legislative Counsel's Digest:

Existing federal law, the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a qualified ABLE program established and maintained by a state, as specified.

Existing law establishes the Qualified ABLE Program, administered by the California ABLE Act Board, in this state for purposes of implementing the federal ABLE Act. Existing law requires the board to segregate the moneys coming into the ABLE program trust into 2 funds: the program fund, which is continuously appropriated, and the administrative fund, which is available upon appropriation by the Legislature. All moneys paid by designated beneficiaries or eligible individuals in connection with ABLE accounts are required to be deposited, as received, into the program fund, promptly invested, and accounted for separately.

Existing law defines "ABLE account" and "designated beneficiary" for purposes of the act. Existing law prohibits acceptance of a contribution to an ABLE account that is not in cash or if the contribution would result in aggregate contributions exceeding a specified amount. Existing law authorizes, to the extent allowed under federal law, all amounts in the designated beneficiary's ABLE account to be transferred into the ABLE account of another designated beneficiary's account. Existing law requires the board to notify all designated beneficiaries of the potential tax consequences of transferring funds from one ABLE account to another, as specified.

Under existing law, following the death of a designated beneficiary, and only after the department has received approval by the federal Centers for Medicare and Medicaid Services, the state is prohibited from seeking recovery under the Medi-Cal estate recovery provisions of any amount remaining in the designated beneficiary's ABLE account for any amount of medical assistance paid under the state's Medicaid plan, and prohibits the state from filing a claim for the payment under the ABLE Act.

This bill would, among other things, instead authorize a change in the designated beneficiary of an ABLE account to take effect upon the death of the designated beneficiary, as specified. The bill would remove the requirement on the board to notify all designated beneficiaries of the potential tax consequences described above.

This bill would also define "CalABLE account" for purposes of the act to mean an ABLE account established pursuant to those provisions and administered by the board. The bill would adjust the aggregate contribution limit on contributions to ABLE accounts. The bill also would provide that the above-described Medi-Cal estate recovery provisions apply to ABLE accounts and CalABLE accounts established prior to January 1, 2023, and to CalABLE accounts established on or after January 1, 2023, thereby limiting the application of the prohibition on the above-described Medi-Cal estate recovery provisions to CalABLE accounts for accounts established after January 1, 2023.

14. AB 2275 (Wood) Mental health: involuntary commitment.

Status: 9/30/22 Chaptered- Secretary of State – Chapter 960 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law, the Lanterman-Petris-Short Act, provides for the involuntary commitment and treatment of persons with specified mental disorders for the protection of the persons committed. Under the act, when a person, as a result of a mental health disorder, is a danger to others, or to themselves, or gravely disabled, the person may, upon probable cause, be taken into custody and placed in a facility designated by the county and approved by the State Department of Health Care Services for up to 72 hours for evaluation and treatment. If certain conditions are met after the 72-hour detention, the act authorizes the certification of the person for a 14-day maximum period of intensive treatment and then a 30-day maximum period of intensive treatment after the 14-day period. Existing law requires a certification review hearing to be held when a person is certified for a 14-day or 30-day intensive treatment detention, except as specified, and requires it to be within 4 days of the date on which the person is certified, but allows for a postponement for 48 hours or until the next regularly scheduled hearing date in specified smaller counties.

This bill would, among other things, specify that the 72-hour period of detention begins at the time when the person is first detained. The bill would remove the provisions for postponement of the certification review hearing. The bill, when a person has not been certified for 14-day intensive treatment and remains detained on a 72-hour hold, would require a certification review hearing to be held within 7 days of the date the person was initially detained and would require the person in charge of the facility where the person is detained to notify the detained person of

specified rights. Because the bill would expand the population of persons who are entitled to a certification review hearing, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

15. SB 1200 (Skinner) Enforcement of judgments: renewal and interest.

Status: 09/30/22 Chaptered – Secretary of State – Chapter 883 Statutes of 2022

Per Legislative Counsel's Digest:

(1) Existing law provides that a judgment is enforceable upon entry, except as specified, and generally permits a judgment creditor to bring an action on a judgment, provided that it is brought within ten years. Existing law provides that the period of enforceability of a money judgment or a judgment for possession or sale of property may be extended by renewal of the judgment upon application by the judgment creditor filed with the court in which the judgment was entered. Existing law allows a judgment debtor to make a motion to vacate or modify the renewal within 30 days of service of a notice of renewal of the judgment.

This bill would increase the amount of days after service of the notice of renewal that a judgment debtor may make a motion to vacate or modify a renewal to 60 days. The bill would allow a judgment creditor to renew the period of enforceability in cases of a money judgment of under $200,000 that remains unsatisfied for a claim relating to medical expenses and for a money judgment of under $50,000 that remains unsatisfied for a claim related to personal debt, as specified, only once and for a period of 5 years from the date the application is filed. The bill would prohibit a judgment creditor from bringing an action on those types of money judgments. The bill would prohibit an application for renewal of a judgment from being filed if the judgment was renewed on or before December 31, 2022.

(2) Existing law provides that interest accrues at the rate of 10% per annum on the principal amount of a money judgment remaining unsatisfied in a civil action.

This bill would, for judgments entered on or after January 1, 2023, or where an application for renewal of judgment is filed on or after January 1, 2023, create the exception that interest accrues at the rate of 5% per annum for a money judgment of under $200,000 that remains unsatisfied for a claim related to medical

expenses and for a money judgment of under $50,000 that remains unsatisfied for a claim related to personal debt, as specified.

16. AB 2436 (Bauer-Kahan) Death certificates: content.

Status: 09/30/22 Chaptered – Secretary of State – Chapter 966 Statutes of 2022

Per Legislative Counsel's Digest:

Existing law specifies the content of a certificate of death, including the full name of the father, birthplace of the father, the full maiden name of the mother, and birthplace of the mother.

This bill would, instead, require the certificate of death to include the current first and middle names, birth last names, and the birthplaces of the parents, without reference to the parents' gendered relationship to the decedent. The bill would require the State Registrar to electronically capture information on the parents' relationship to the decedent and any additional last names used by the parents, which would not be transcribed onto the actual hard copy of the death certificate. The bill would require the State Registrar to implement the changes made by the bill no later than July 1, 2024.

17. SB 522 (Niello) Uniform Fiduciary Income and Principal Act.

Status: 06/29/23 Chaptered – Secretary of State – Chapter 28 Statutes of 2023

Per the Legislative Counsel's Digest:

"Existing law, the Uniform Principal and Income Act, generally sets forth the powers and duties of a fiduciary of a trust. These powers and duties are related to, among other matters, the allocation of receipts and disbursements between principal and income, making adjustments between principal and income, and converting a trust to a unitrust.

This bill would repeal the Uniform Principal and Income Act, and would recast, revise, and expand those provisions as the Uniform Fiduciary Income and Principal Act, for similar purposes. The bill would define relevant terminology in this regard. The bill would expressly provide that its provisions, with specified exceptions, apply when California is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest, as specified. The bill would declare that by accepting the trusteeship of a trust having its principal place of administration in, or by moving the principal place of administration of a trust to, California, a trustee submits to the application of the bill to any matter within the scope of the bill involving the trust."

18. SB 133 (Committee on Budget and Fiscal Review) Courts.

Status: 06/30/23 Chaptered – Secretary of State – Chapter 34 Statutes of 2023

Per the Legislative Counsel's Digest:

"(1) The California Constitution vests the judicial power of the state in the Supreme Court, courts of appeal, and superior courts, and establishes the Judicial Council to, among other things, adopt rules of court and perform functions prescribed by statute. Existing law, the Nonprofit Public Benefit Corporation Law, authorizes and regulates the formation and operation of, among others, nonprofit public benefit corporations.

This bill would establish the California Access to Justice Commission, a nonprofit public benefit corporation, and would authorize the commission to receive funding appropriated by the Legislature. The bill would specify the membership of the commission and terms of the members. The bill would specify the purposes for which the commission may receive and use funding including, among others, providing ongoing leadership in efforts to achieve full and equal access to justice for all Californians. The bill would make the commission subject to the Nonprofit Public Benefit Corporation Law and would set the public meeting requirements for the commission.

(2) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law requires an attorney or law firm receiving or disbursing trust funds to establish and maintain an Interest On Lawyers' Trust Accounts (IOLTA) account in which the attorney or law firm is required to deposit or invest specified client deposits or funds. Existing law requires interest and dividends earned on IOLTA accounts to be paid to the State Bar of California and used for programs providing civil legal services without charge to indigent persons. Existing law requires the State Bar of California to distribute IOLTA funds and specified other funds to qualified legal service projects and qualified support centers, as defined, for the provision of civil legal services without charge to indigent persons in accordance with a specified statutory scheme. Existing law authorizes qualified legal services projects and qualified support centers to use the funds to provide work opportunities with pay and scholarships for disadvantaged law students to help defray their law school expenses, among other purposes.

This bill would authorize qualified legal service projects and qualified support centers to also use the funds to provide loan repayment assistance for the purposes of recruiting and retaining attorneys in accordance with a loan repayment assistance program administered by the California Access to Justice Commission. The bill would appropriate $250,000 from the General Fund to the Judicial Council to provide funding to the California Access to Justice Commission to administer a tax advantaged student loan repayment assistance program for

service providers employed by qualified legal service projects and support centers, as specified.

(3) Existing law establishes the Appellate Court Trust Fund, the proceeds of which shall be used for the purpose of funding the courts of appeal and the Supreme Court. Existing law requires the funds, upon appropriation by the Legislature, to be apportioned by the Judicial Council to the courts of appeal and the Supreme Court taking into consideration all other funds available and the needs of each court in a manner that promotes equal access to the courts, ensures the ability of the courts to carry out their functions, and promotes implementation of statewide policies.

This bill would authorize the funds to be apportioned by the Judicial Council to the Supreme Court, courts of appeal, and the Judicial Council, taking into consideration all other funds available to each and the needs of each.

(4) Existing law generally requires the superior court, as an employer, to provide employees with the use of a lactation room or other location for employees to express milk in private, including, among other things, a clean and safe place to sit. Existing law requires the superior court, commencing July 1, 2024, to provide any court user access to a lactation room in any courthouse in which a lactation room is also provided to court employees, as specified.

This bill would delay until July 1, 2026, the date by which the courts are required to provide public lactation rooms.

(5) Existing law, until July 1, 2023, imposes a supplemental fee of $40 for filing any first paper subject to the uniform fee in certain civil proceedings, subject to reduction if the amount of the General Fund appropriation to the Trial Court Trust Fund is decreased from the amount appropriated in the 2013–14 fiscal year.

This bill, among other things, would remove the July 1, 2023, sunset from those provisions, thereby extending those supplemental fees indefinitely.

Under existing law, the uniform fee for filing any specified motion, application, order to show cause, or any other paper requiring a hearing subsequent to the first paper is $60 until July 1, 2023, at which time that fee is reduced to $40.

This bill would remove the July 1, 2023, reduction of that filing fee to $40 and would indefinitely extend the operation of the $60 supplemental fee.

Existing law, until July 1, 2023, requires a $1,000 fee to be paid on behalf of all plaintiffs, and by each defendant, intervenor, respondent, or adverse party to a civil action that is designated or determined to be a complex case. On and after July 1, 2023, existing law requires a fee of $550 to be paid under those circumstances. Existing law, until July 1, 2023, imposes a limitation of $18,000 on the total amount of complex fees collected from all defendants, intervenors, respondents, or other adverse parties appearing in a complex case. On and after

July 1, 2023, existing law imposes a limitation of $10,000 on the amount of the fee required to be paid in those circumstances.

This bill would extend the operation of the $1,000 complex case fee and the $18,000 total fee limitation indefinitely, thereby extending that higher fee rate and limitation.

(6) Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and authorizes a person to prosecute a writ of habeas corpus for a violation of those provisions. Existing law requires the court to appoint counsel for the petitioner if the petitioner cannot afford counsel and either the petition alleges facts that would establish a violation of those provisions or the State Public Defender requests counsel be appointed.

This bill would require Judicial Council to promulgate standards for appointment of private counsel in superior court for claims where an individual has not been sentenced to death. The bill would require those standards to include a minimum requirement of 10 hours of training in the California Racial Justice Act of 2020 approved for Minimum Continuing Legal Education credit by the State Bar of California. The bill would, if the individual has been sentenced to death, require the appointment standards to be consistent with existing standards in the California Rules of Court.

(7) Existing law authorizes, until July 1, 2023, a party to appear remotely and a court to conduct conferences, hearings, proceedings, and trials in civil cases, in whole or in part, through the use of remote technology.

This bill would extend these provisions until January 1, 2026. The bill would exempt specific types of proceedings from these provisions. The bill would authorize, until January 1, 2026, a court to conduct an adoption finalization hearing, in whole or in part, through the use of remote technology, without the court making specific findings and would prohibit a court from requiring a party to appear through the use of remote technology.

The bill would additionally authorize, until January 1, 2026, the use of remote technology, as defined, for other types of proceedings, including, among others, proceedings regarding the involuntary treatment and conservatorship of gravely disabled persons under specified provisions, contempt proceedings, and competency proceedings. The bill would provide specified circumstances in which remote technology cannot be used.

Existing law generally subjects any person under 18 years of age who commits a crime to the jurisdiction of the juvenile court, which may adjudge that person to be a ward of the court. Existing law provides the right of a minor subject to juvenile court hearings to be physically present for those hearings.

This bill would authorize the use of remote technology in juvenile justice proceedings, as defined, except in specified circumstances, until January 1, 2026. The bill would authorize the court to develop local procedures or protocols regarding the use of remote technology consistent with legislative findings and declarations in support of these provisions.

The bill would require the Judicial Council, by April 1, 2024, to adopt, and trial court to implement by July 1, 2024, minimum standards for the courtroom technology necessary to permit remote participation in proceedings subject to these provisions. The bill would require, until July 1, 2024, that when the court conducts proceedings that will be reported by an official reporter or official reporter pro tempore, that the reporter be physically present in the same room as the judicial officer, except as specified. The bill would require, beginning July 1, 2024, that when the court conducts proceedings that will be reported by an official reporter or official reporter pro tempore, that the reporter be physically present in the same room as the judicial officer if the court cannot provide specified technology standards. The bill would repeal these provisions on January 1, 2026.

The bill would require the Judicial Council to adopt rules that include standards for when a judicial officer, in limited situations and in the interest of justice, may preside over a remote court proceeding from a location other than a courtroom.

The bill would require each superior court to report to the Judicial Council on or before October 1, 2023, and annually thereafter, and for the Judicial Council to report to the Legislature on or before December 31, 2023, and annually thereafter, to assess the impact of technology issues or problems affecting remote proceedings and purchases and leases of technology and equipment to facilitate remote conferences, hearings, or proceedings.

Existing law prohibits, until January 1, 2024, a trial court from retaliating against an official court reporter or official court reporter pro tempore for notifying a judicial officer that technology or audibility issues are interfering with the creation of the verbatim record for a remote proceeding conducted pursuant to specified provisions of the Penal Code.

This bill would, until January 1, 2026, expand application of this provision to all proceedings that include participation through remote technology, but would limit application to an official reporter or official reporter pro tempore that qualifies as a “trial court employee,” as defined.

(8) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(9) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill."