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California Supreme Court Survey: March 1997 - August 1997

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The California Supreme Court Survey provides a brief synopsis of recent decisions by the supreme court. The purpose of the survey is to inform the reader of issues that the supreme court has addressed, as well as to serve as a starting point for researching any of the topical areas. Attorney discipline, judicial misconduct, and death penalty appeal cases have been omitted from the survey.

The survey will review California Supreme Court cases in a summary format. Summaries provide the facts, holdings and brief outlines of the areas of law addressed in California Supreme Court cases. Additionally, summaries include references to additional research sources. Summaries are designed to provide the reader with a basic understanding of the legal implications of cases in a concise format.

SUMMARIES

I. Automobile and Highway Traffic

A report filed by a non-arresting officer is admissible in an Administrative Per Se hearing to determine the suspension of a driver's license for driving under the influence, and hearsay evidence is admissible in the same hearing if supplementing other admissible evidence. Additionally, there is no requirement that the forensic laboratory's report, detailing the blood-alcohol content of the driver be formally certified.

IV. Courts

When failure of a plaintiff to comply with local "fast track" rules implementing the Trial Court Delay Reduction Act (California Government Code section 68600) is the responsibility of plaintiff's counsel and not of the party, California Civil Procedure Code section 575.2(b) prohibits dismissal of the action as a sanction, despite the language of California Government Code section 68608(b), which gives a judge authority to impose sanctions, including dismissal, for noncompliance with fast track rules.

V. Dissolution of Marriage

State courts have subject matter jurisdiction to determine if a superior court's order is a QDRO under ERISA if the action is a claim for benefits under the terms of the retirement plan, rather than to enforce ERISA. Further, application of the Rule of 75 to benefits paid to an alternate beneficiary prior to an employee's retirement, constitutes a subsidy, and is improper under ERISA.

VI. State of California/Fiscal Matters

Superior courts have jurisdiction to hear claims related to state mandates to counties, even where test claims are otherwise pending. Moreover, where the state requires a county to provide a specific level of medical coverage to indigents, the state has man-

I. Automobile and Highway Traffic

A report filed by a non-arresting officer is admissible in an Administrative Per Se hearing to determine the suspension of a driver's license for driving under the influence, and hearsay evidence is admissible in the same hearing if supplementing other admissible evidence. Additionally, there is no requirement that the forensic laboratory's report, detailing the blood-alcohol content of the driver be formally certified.

Lake v. Reed, Supreme Court of California, Decided August 7, 1997, 16 Cal. 4th 448, 939 P.2d 748, 65 Cal. Rptr. 2d 348.

Facts. The plaintiff, Richard Lake, was driving his car when he approached an intersection with a four-way stop. Another car had stopped at the intersection before Lake, and then proceeded into the intersection, having the right of way. Lake then entered the intersection, striking the other car. Two officers responded to the accident, and both filed reports. Officer Dickerson reported that Lake exhibited signs of intoxication. Officer King's report noted that Lake admitted to being the driver, to entering the intersection, and to hitting the other car. He further concluded that the accident was the result of Lake's intoxication. Both officers also interviewed several witnesses.

Lake was arrested, at which time he submitted a urine sample for the blood-alcohol test. Officer Dickerson then notified Lake that his license would be suspended in thirty days unless he requested a hearing to contest this action. Lake requested the hearing. To suspend the license at the hearing, the DMV was required to prove both that Lake was driving the car, and that his blood-alcohol level exceeded the statutory limit of .08 percent.

At the hearing, the DMV introduced the officers' reports, as well as the report from the forensic laboratory and the results of the blood-alcohol test. Lake objected to Officer Dickerson's report, claiming that it contained inadmissable hearsay. He objected to King's report on the grounds that it was "an unauthenticated copy of the original, it was unsworn, and it contained hearsay." Lake's primary objection to the lab report was that it was unsworn, while he objected to the test results because they were

unsworn and were hearsay. All of the evidence was admitted, and Lake's license was subsequently suspended.

Holding. The California Supreme Court held that Officer King's report was admissible, even though unsworn, because the statutes only require a report to be sworn if made by the arresting officer. In this case, the arresting officer was Dickerson, not King. The statute, however, does not preclude the use of reports made by other officers which are not sworn. Further, the court noted that any relevant evidence may be admitted if it would be relied upon by a reasonable person. Because King's report met this standard, it was admissible. Moreover, it fell within the public employee's exception to the hearsay rules, and Lake's statement within the report was a party admission. The court further stated that Dickerson's report, although hearsay, was admissible. The court pointed to the statutes, which allow hearsay evidence to be utilized if it supplements or explains other evidence admitted. Because Dickerson's report supplemented King's admissible report, his report was admissible evidence in the hearing.

As to the forensic laboratory's report and test results, the court held that these were admissible because there was no requirement that such a report or lab tests be formally certified. Moreover, the report was admissible hearsay, in that it was "within the public employee's record exception to the hearsay rule."

REFERENCES

Statutes:

CAL. VEH. CODE § 13353.2(a)(1) (West Supp. 1998) (requiring the DMV to suspend the license of a driver with blood-alcohol content of .08 percent or greater).

CAL. VEH. CODE § 13558 (West Supp. 1998) (allowing a driver whose license is to be suspended to request a hearing on the matter).

CAL. VEH. CODE § 13557(b)(2) (West Supp. 1998) (outlining the required showing to suspend a license at a hearing).

CAL. VEH. CODE § 13557(a) (West Supp. 1998) (explaining the evidence that may be used by the DMV in deciding the suspension of a driver's license).

CAL. GOV'T CODE § 11513(c) (West Supp. 1998) (explaining the standard for admissible evidence in an administrative hearing).

CAL. GOV'T CODE § 11513(d) (West Supp. 1998) (allowing the use of hearsay evidence in an administrative hearing to supplement or explain admissible evidence).

Legal Texts:

7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* § 523 (9th ed. 1988) (discussing procedures for hearings related to the suspension of a driver's license).

7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* § 559 (9th ed. 1988) (discussing the Administrative Procedure Act).

7 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Constitutional Law* § 572 (9th ed. 1988) (discussing the use of witnesses and evidence in administrative hearings).

8 CAL. JUR. 3D *Automobiles* § 153 (1993) (discussing the procedure for revoking a driver's license).

8 CAL. JUR. 3D *Automobiles* § 129 (1993) (discussing the state's power to revoke a driver's license).

Law Review and Journal Articles:

Stephanie Ann Miyoshi, Note and Comment, *Is the DUI Double-Jeopardy Defense D.O.A.?*, 29 LOY. L.A. L. REV. 1273, 1276 (1996) (comparing license suspension to civil forfeiture).

Charles A. Pacheco, *Admin Per Se for the Practitioner*, 24 PAC. L.J. 461, 463-65 (1993) (explaining the requirements of the "Administrative Per Se" law).

Michael Asimov, *Toward a New California Administrative Procedure Act: Adjudicative Fundamentals*, 39 UCLA L. REV. 1067, 1192 n.341

(1992) (discussing the DMV's role in hearings of both presenting and deciding the case).

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II. Civil Service

Chapter 433, the 1993 statute amending Government Code section 14130, and expanding Caltrans's authority to contract with the private sector, is constitutionally invalid to the extent that its provisions conflict with the civil service mandate of article VII, section 1 of the California Constitution, which case law interprets as forbidding private contracts for work that the state's civil service can perform "adequately and competently." Thus, Chapter 433 provided an insufficient basis for modifying or dissolving a 1990 injunction prohibiting Caltrans from contracting privately without satisfying the statutory criteria set forth in Government Code section 14301 and former section 14130 et seq.

Professional Engineers in California Government v. Department of Transportation, Supreme Court of California, Decided May 15, 1997, 15 Cal. 4th 543, 936 P.2d 473, 63 Cal. Rptr. 2d 467.

Facts. Article VII, section 1 of the California Constitution, commonly known as the "civil service mandate," provides that "[i]n the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination." California case law holds that the civil service mandate impliedly prohibits private contracting for services traditionally performed by the state that can be performed "adequately and competently" by civil service employees. Consistent with this mandate, the Legislature enacted Government Code section 14101 and former section 14130, establishing the statutory criteria for private contracting in specified circumstances. Specifically, section 14101, allows private contracting for architect and engineering services only if "the obtainable staff is unable to perform the particular work within the time the public interest requires the work to be done." Former section 14130 allowed private contracting for professional and technical services "whenever the department is inadequately staffed to satisfactorily carry out its program . . . in a timely and effective manner."

In 1986, the plaintiffs sought an injunction to prohibit Caltrans from privately contracting for engineering services on state highway projects traditionally done by civil service employees without satisfying the statutory criteria. In 1990, following trial, the superior court issued a permanent injunction forbidding Caltrans from, among other things, contracting privately for such services unless the work to be performed complied with the statutory criteria set forth in section 14101 and former section 14130. The trial court expressly found that Caltrans failed to justify the private contracts because it failed to show that the work could not be timely completed by hiring additional available civil service staff, or that private contracting was more cost effective.

In 1993, the Legislature enacted Chapter 433, which amended sections 14130 to 14137 and greatly expanded Caltrans's authority to contract privately. Believing these amendments justified dissolution of the 1990 injunction, Caltrans increased its level of private contracting for fiscal year 1993-1994. The plaintiffs sought a contempt order asserting that Chapter 433 did not authorize Caltrans to increase its private contracting in violation of the injunction. Agreeing with the plaintiffs, the superior court refused to dissolve or modify the injunction. The court held that Caltrans violated the 1990 injunction because it could not factually demonstrate that the planned private contracting satisfied the statutory criteria as required by the injunction. The court further found that Chapter 433, the 1993 amendments purporting to expand Caltrans's authority to contract privately, violated the civil service mandate of the California Constitution. The court reasoned that the legislative findings and directives set forth in Chapter 433 were erroneous, unsubstantiated, and insufficient by themselves to permit the private contracts under the applicable constitutional principles.

The court of appeal reversed the judgment concluding that Chapter 433's legislative findings and directives were sufficient to justify the private contracts. Therefore, the court of appeal remanded the matter to the trial court with instructions to dissolve the 1990 injunction. The California Supreme Court granted review to determine whether Chapter 433 authorized the private contracts at issue.

Holding. Reversing the decision of the court of appeal, the California Supreme Court held that the trial court properly found that the provisions of Chapter 433 amending Government Code section 14130 were unconstitutional to the extent that they conflicted with the civil service mandate of California Constitution. Thus, the supreme court held that the amendments did not justify modification or dissolution of the 1990 injunction. The supreme court refused to overrule *State Compensation Ins. Fund v. Riley*, 9 Cal. 2d 126, 134-36, 69 P.2d 985, 111 A.L.R. 1503 (1937), which held that the civil service mandate impliedly prohibits

private contracting for services traditionally performed by the state that can be performed "adequately and competently" by civil service employees. The supreme court concluded that *Riley* serves the public policy interests of economy and efficiency underlying the civil service mandate and protects it from destruction. Moreover, the supreme court rejected Caltrans's public policy arguments that the private contracting restricting under *Riley* and its progeny has made service delivery more expensive. First, other jurisdictions place similar economy and efficiency restraints on private contracting. Second, *Riley* does not threaten state fiscal responsibility or public safety. Third, the civil service mandate permits experimental privatization in cases that involve a complete withdrawal of a traditional state function and require no state funding.

Next, the supreme court examined the constitutionality of Chapter 433 to determine whether it serves as sufficient grounds for dissolving the trial court's 1990 injunction. Agreeing with the trial court, the supreme court concluded that Chapter 433 was unconstitutional to the extent it conflicted with the civil service mandate of article VII. First, the court held that Chapter 433 contained no express or implied findings that satisfied the constitutional requirement that the civil service was unable to "adequately and competently" perform the work at issue, or that privatization would result in significant cost savings. The court explained that although the Legislature clearly expressed a preference for privatization, this preference is not a legitimate basis for disregarding the constitutional requirements of the civil service mandate as established in *Riley* and its progeny. Moreover, even if Chapter 433 contained such express findings, without any empirical or evidentiary support such findings do not satisfy the constitutional requirements of article VII and are insufficient on their face to supplant the trial court's specific factual determination to the contrary.

REFERENCES

Statutes:

CAL. CONST. art. VII, § 1 (the "civil service mandate," which establishes the civil service system and provides that "permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination").

CAL. GOV. CODE § 14101 (West 1992) (permitting Caltrans to "contract with qualified architects and engineers for the performance of work when . . . the obtainable staff is unable to perform the particular work within the time the public interest requires such work to be done.")

CAL. GOV. CODE former § 14130 (West 1992) (former provision, applicable prior to 1993 amendments, prohibiting contracting practices that cause layoffs, displacement, or nonuse of available civil service employees absent compelling cost considerations).

CAL. GOV. CODE § 14130 (West Supp. 1998) (purportedly expanding Caltrans's authority to contract privately as needed to assure timely project delivery and to afford "a new and independent basis upon which to justify" private contracts).

Case Law:

State Compensation Ins. Fund v. Riley, 9 Cal. 2d 126, 134-36, 69 P.2d 985 (1937) (holding that the constitutional civil service mandate of article VII forbids private contracting for permanent or temporary services that can be performed "adequately and competently" by civil service employees).

California State Employees' Ass'n v. California, 199 Cal. App. 3d 840, 844-46, 245 Cal. Rptr. 232 (1988) (upholding the constitutionality of legislation that allows the state to contract for "personal services" to obtain cost savings, so long at the state satisfies the other civil service requirements).

California State Employees' Ass'n v. Williams, 7 Cal. App. 3d 390, 394-95, 86 Cal. Rptr. 305 (1970) (allowing private contracting for "new state functions").

Professional Eng'rs v. Department of Transp., 13 Cal. App. 4th 585, 593-94, 16 Cal. Rptr. 2d 599 (1993) (allowing privatization on an experimental basis based on considerations of efficiency and economy where the state released a former state function and no state funds were used on the project).

Legal Texts:

2 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Agency & Employment* § 11 (9th ed. 1987) (discussing the civil service regulations).

52 CAL. JUR. 3D *Public Officers and Employees* §§ 1-11 (1979 & Supp. 1998) (generally discussing the California civil service system; section 6 specifically addresses the requirements for contracting with independent contractors).

Law Review and Journal Articles:

Craig Becker, *With Whose Hands: Privatization, Public Employment, and Democracy*, 6 YALE L. & POL'Y REV. 88, 99-103 (1988) (discussing the conflict between civil service law and privatization).

Malcolm S. Burnstein, Comment, *Contracting With the State Without Meeting Civil Service Requirements*, 45 CAL. L. REV. 363, 364 (1957) ("The inclusion of independent contractors is of vital importance as it cuts off a wide area of possible subversion of the civil service system.")

Developments in the Law, Public Employment, 97 HARV. L. REV. 1611 (1979) (discussing civil service systems generally).

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III. Counties

While cities and fire districts may retain control of their Emergency Medical Services in place prior to June 1, 1980, as provided by California Health & Safety Code section 1797, California Health & Safety Code section 1798(a) mandates that all medical control of those services, including patient management and dispatch priorities, shall be subject to the local EMS authority's management; cities and fire districts may not expand or add emergency services not already in place prior to June 1, 1980.

County of San Bernadino v. City of San Bernadino, Supreme Court of California, Decided June 30, 1997, 15 Cal. 4th 909, 938 P.2d 876, 64 Cal. Rptr. 2d 814.

Facts. In 1975, the City of San Bernadino began to staff its fire companies with firefighter/paramedics in order to provide advance life support services in emergency situations. At that time, the service was provided free of charge. The City continued to contract with a private emergency medical service (EMS) company for ambulance service, as it had since 1948. In 1991, the City began charging for its paramedic services. It also instituted a policy change dispatching the City paramedics at a higher priority to an emergency than the private ambulance service. The result was that the City paramedics would usually arrive at the scene of an emergency and provide EMS services before the private EMS company.

The County of San Bernadino, which was responsible for the EMS plan for all areas within the county under California Health & Safety Code section 1798 (EMS Act of 1990), objected to the City's new policy, claiming that it would put those in need of emergency services at greater risk. The County responded by issuing two protocols under its authority pursuant to section 5 of the EMS Act. The first provided that patient management responsibility would rest with the first EMS service to arrive at the scene. The second mandated that both EMS paramedics and ambulance services be dispatched at equal priorities.

The City refused to honor the protocols and the County sued, seeking declaratory and injunctive relief under the EMS Act. According to the County, the City was violating the EMS protocols by taking patient control away from private EMS providers that first arrived on the scene. The County alleged that the City'a goal was to maximize its profits from providing EMS services. The City claimed that the County lacked authority

to require the following of county EMS protocols. At the time the lawsuit was filed, the City announced plans to replace the private ambulance service with a city run service, in an attempt to nullify the protocol violation issue.

The trial court granted summary judgment to the City on all issues except the City's right to expand its existing services to include ambulance service. The trial court held that the EMS Act authorized cities providing EMS services prior to June 1, 1980 to continue as exclusive providers of such services, and that the County has no authority to mandate protocols on any topics other than "medical control." The court also held that the EMS Act prevented the City from expanding into any EMS services that it did not already provide as of June 1, 1980. Any expansion of services would have to be negotiated with the county EMS authority. The court of appeal affirmed the trial court as to all issues except the restriction on the city's expansion into ambulance services, holding that the City did not have to negotiate with the County for expanded EMS services.

Holding. The supreme court affirmed the decision of the court of appeal, holding that the EMS Act allowed the City to continue any EMS services it had been providing prior to June 1, 1980, but reversed as to the other issues. In addressing the issue of the City's right to continue providing emergency services without any County negotiation, the court noted that section 1797.201 of the EMS Act gave cities with services already in place prior to June 1, 1980, the option to negotiate with county authorities, but did not mandate it. The court indicated that there was no requisite time frame for cities to begin negotiations with county authorities, and until such time as the cities decided to do so, they maintained authority over their existing emergency services.

The court next discussed the authority of the County to mandate EMS protocols to the City. The court noted that section 1798(a) of the Act gave local EMS authorities medical control over city emergency services. While the court of appeal did not interpret this language to apply to dispatch priorities and patient management, which the City argued were administrative functions, the supreme court disagreed. The court noted that the Legislature had a broad view of matters covered under its medical control language, including dispatch and patient care. The court reasoned that because the County protocols dealt with EMS provider interaction at an emergency scene, they were consistent with the coordinating function envisioned by the Legislature for local EMS authorities, and the City was bound to follow them.

In discussing the authority of the City to expand its emergency services to include ambulance service, the court looked to the language of section 1797.201 of the Act. While the language of this section does allow cities to "retain" management of emergency services in place prior to June 1, 1980, the court reasoned that because the City did not have emergency ambulance services in place at that time, it would not be retaining that service by replacing the private provider with a city run service. The court indicated that this construction was consistent with the Legislature's intent to fix, at a specific point in time, cities' authority within the local EMS system. To construe the statute to allow the City to expand its authority would move even farther away for the legislative goal of integration of the emergency services system within each local EMS authority.

REFERENCES

Statutes:

CAL. HEALTH & SAFETY CODE § 1797.201 (West 1990 & Supp. 1998) (allowing cities to retain management of emergency services in place prior to June 1, 1980).

CAL. HEALTH & SAFETY CODE § 1798(a) (West 1990 & Supp. 1998) (granting local EMS authorities medical control over city emergency services).

Legal Texts:

45 CAL. JUR. 3D *Municipalities* §§ 163-167 (1985 & Supp. 1997) (discussing the balance between county and city governments involving regulation of municipal services).

8 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Exercise of Police Power by Local Subdivision* §§ 792-806 (9th ed. 1988 & Supp. 1997) (discussing the constitutional authority of county governments to make and enforce local ordinances and regulations).

Law Review and Journal Articles:

Byron K. Toma, *Legal Impediments to Cost Effective Provision of Emergency Medical Services in California: Why Ambulance Franchising and Other Innovations to Control EMS Costs May Fail*, 17 WHITTIER

L. REV. 47 (1995) (discussing legal obstacles to ambulance franchising and other cost containment strategies under California's EMS Act).

Byron K. Toma, *The Decline of Emergency Medical Services Coordination in California: Why Cities Are at War With Counties Over Illusory Ambulance Monopolies*, 23 SW. U. L. REV. 285 (1994) (discussing recent efforts by California cities to obtain monopoly power over local ambulance services).

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When failure of a plaintiff to comply with local "fast track" rules implementing the Trial Court Delay Reduction Act (California Government Code section 68600) is the responsibility of plaintiff's counsel and not of the party, California Civil Procedure Code section 575.2(b) prohibits dismissal of the action as a sanction, despite the language of California Government Code section 68608(b), which gives a judge authority to impose sanctions, including dismissal, for noncompliance with fast track rules.

Garcia v. McCutchen, Supreme Court of California, Decided Aug. 14, 1997, 16 Cal. 4th 469, 940 P.2d 906, 66 Cal. Rptr. 2d 319.

Facts. The plaintiff filed a personal injury action in Fresno County Superior Court in April 1993, for injuries suffered in an altercation at a local cocktail lounge. On June 28, the clerk of the court served the plaintiff's counsel with notice of failure to comply with a local rule requiring the plaintiff to serve the complaint on all named parties, and to supply the court with proof of service within sixty days of filing the complaint. This rule was one of several promulgated by the Fresno County Superior Court in order to implement California Government Code section 68600, the Trial Court Delay Reduction Act (the Act).

Over the next eleven months, the plaintiff's counsel continued to ignore, or delayed in responding to, various orders of the court concerning, among other things, appearance for status meetings, filing of an at issue memorandum, and filing of a declaration explaining noncompliance. The trial court eventually scheduled a June 21, 1994, hearing on a sua sponte motion to dismiss the action under the court's fast track rules. The court indicated that the plaintiff's counsel should appear in person in order to give good reason why the action should not be dismissed.

The plaintiff's counsel failed to appear at the hearing and the judge dismissed the action without prejudice. This dismissal ended the litigation because the statute of limitations on the action had run. At a hearing for reconsideration of the dismissal, The plaintiff's counsel claimed he believed his appearance had been obviated by another judge partially sustaining a defendant's demurrer, with leave for the plaintiff to amend the complaint by July 20. The judge denied the motion for reconsideration and dismissed the action.

The court of appeal reversed the trial court's dismissal of plaintiff's complaint, holding that California Civil Procedure Code section 575.2(b) prohibits dismissal of the plaintiff's action as a sanction for noncompliance with local fast track rules, when noncompliance is the fault of counsel and not the party. The court reasoned that the legislative intent expressed in section 575.2(b) clearly indicates that a party's cause of action should not be lost because of procedural mistakes by his attorney.

Holding. The supreme court affirmed the decision of the court of appeal, determining that Civil Procedure Code section 575.2(b) prohibits dismissal of a plaintiff's action when failure to comply with local fast track rules is the fault of a plaintiff's attorney. The court reasoned that although Government Code section 68608(b) does give a judge the power to dismiss actions for failure to comply with fast track rules, the statute specifically limits sanctions to those "authorized by law." Because Civil Procedure Code section 575.2(b) provides that any penalty for failure to comply with local rules that is the responsibility of counsel shall not adversely affect the party's cause of action, such a sanction is not authorized by law. Based on this reasoning, the court concluded that Government Code section 68608(b) did not authorize the trial court's dismissal of the plaintiff's action.

The defendants argued against this statutory interpretation, invoking the principle that specific statutory provisions concerning a particular subject should govern as against general provisions concerning the subject. They argued that because Government Code section 68608(b) specifically deals with sanctions concerning noncompliance with local fast track rules, its language allowing dismissal as a sanction should control over the more general provisions in Civil Procedure Code section 575.2(b).

The court noted that this principle is only to be applied when the statutes in question cannot be reconciled. The court indicated that the language in Government Code section 68608(b) limiting sanctions to those authorized by law expressly incorporates the terms of Civil Procedure Code section 575.2(b). The court reasoned that when the specific statute mandates compliance with other nonconflicting laws, the principle relied upon by the defendants is entitled to little weight.

Finally, the defendants argued that the public policy of the Act, to reduce litigation delay, can only be advanced by allowing trial courts expanded dismissal power for fast track rules violations. The court was not persuaded by this argument, noting that general public policy argu-

ments cannot supplant the clear intent of the Legislature as it is expressed in particular statutes. The court reasoned that the public policy of reducing litigation delay, as expressed in the Act, was subjugated to the Legislature's intent that litigation be decided on its merits, as expressed in Government Code section 68601(c) and indicated by the language of Civil Procedure Code section 575.2(b). The court concluded by noting various other sanctions trial court's have at their disposal to deal with fast track rules violations, such as payment of opposing party's litigation expenses, fines, and even imprisonment resulting from contempt citation.

REFERENCES

Statutes:

CAL. CIV. PROC. CODE § 575.2(b) (West Supp. 1998) (disallowing dismissal as a sanction for delay caused by plaintiff's counsel).

CAL. GOV'T CODE § 68608(b) (West 1997 & Supp. 1998) (providing various sanctions for fast track rules violations).

Legal Texts:

16 CAL. JUR. 3D *Courts* §§ 163, 164 (1983 & Supp. 1997) (discussing validity and enforcement of local court rules).

6 B.E. WITKIN, CALIFORNIA PROCEDURE, *Proceedings Without Trial* §§ 438-446 (4th ed. 1989 & Supp. 1997) (discussing dismissal as a sanction for trial delay).

7 B.E. WITKIN, CALIFORNIA PROCEDURE, *Trial Court Delay Reduction Act* § 38 (4th ed. 1989 & Supp. 1997) (detailing available sanctions under the Trial Court Delay Reduction Act for litigation delay).

Law Review and Journal Articles:

Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach*, 36 DRAKE L. REV. 483 (1987) (discussing judicial sanctions for litigation delay).

Robert Kerekes, *The Crisis of Congested Courts: One Potential Solution*, 18 SETON HALL LEGIS. J. (1994) (discussing New Jersey's trial court delay reduction act which allows dismissal as a sanction).

Florrie Young Roberts, *Pre-Trial Sanctions: An Empirical Study*, 23 PAC. L.J. 1 (1991) (giving a statistical breakdown of pre-trial court sanctions in the Central District of Los Angeles County Superior Court).

Harry N. Schreiber, *Innovation, Resistance, and Change: A History of Judicial Reform in the California Courts, 1960-1990*, 66 S. CAL L. REV. 2049 (1993) (discussing the problems of delay in the California court system).

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V. Dissolution of Marriage

State courts have subject matter jurisdiction to determine if a superior court's order is a QDRO under ERISA if the action is a claim for benefits under the terms of the retirement plan, rather than to enforce ERISA. Further, application of the Rule of 75 to benefits paid to an alternate beneficiary prior to an employee's retirement, constitutes a subsidy, and is improper under ERISA.

In re Marriage of Oddino, Supreme Court of California, Decided July 28, 1997, 16 Cal. 4th 67, 939 P.2d 1266, 65 Cal. Rptr. 2d 566.

Facts. On January 19, 1983, the marriage of James M. and Mary K. Oddino was dissolved. James had participated in his employer's retirement plan. As a result of the dissolution, Mary was awarded a portion of James' retirement benefits. Mary's payments were to begin on April 1, 1988, and were to be calculated as if James had retired on that date, his fifty-fifth birthday. The plan's administrator informed Mary and James that the order by the superior court was a QDRO, a qualified domestic relations order. Under a QDRO, a private retirement plan may be required, pursuant to ERISA, to pay a portion of retirement benefits to a retiree's spouse if certain specifications are met.

In calculating the amount to be paid to Mary, the monthly annuity amount was reduced. Under the plan, if an employee retires at age fifty-five, and the sum of his age and years of service totals seventy-five, that employee's benefits are determined without actuarial reduction. This is called the "Rule of 75." However, if the employee retires prior to age fifty-five, or between fifty-five and sixty-five with a sum of age and years of service less than seventy-five, the benefit will be reduced to "actuarial equivalent of the age 65 benefit."

Mary then sought an order to require the plan to calculate her benefits using the Rule of 75, which the plan opposed, claiming such an order would not be a QDRO. The superior court denied the motion. The court of appeal reversed, ordering the plan to utilize the Rule of 75 in determining benefits. The court stated that the order would still be a QDRO, even if paying unreduced benefits.

Holding. The California Supreme Court held that the California courts had subject matter jurisdiction to determine whether a superior court's order was a QDRO. The court noted that the action in the present case

was an action to recover benefits due under the terms of the plan, as a court can require a plan to pay certain benefits to the nonemployee spouse. The action thus fell within section 1132(a)(1)(B). As a result, federal and state courts have concurrent jurisdiction over the action pursuant to section 1132(e)(1). The court further noted that Congress likely did not intend to have separate actions brought in federal court to determine if an order was a QDRO, when the action was already pending in state court.

The court also held that it was improper to apply the Rule of 75, as such application would give the nonemployee spouse a subsidy. The court explained that section 1056(d)(3)(E)(i)(II) "limits benefits payable under preretirement QDROs to 'the present value of benefits actually accrued.'" Thus, the plan could not pay unreduced benefits to Mary under the Rule of 75 until James actually retired, as the value of the benefit calculated under the rule would be far in excess of the age-65 benefit's actuarial equivalent. This excess constitutes a subsidy. The court further considered a 1984 Senate Report on ERISA, which stated that payments made to an alternate payee prior to the employee's retirement must only consider the actual value accrued, and may not consider any subsidies paid by the employer. Because application of the Rule of 75 would constitute a subsidy, the application of the rule would be improper under ERISA.

REFERENCES

Statutes:

29 U.S.C. § 1001 (1994) (ERISA).

29 U.S.C. § 1132(e)(1)(1994) (granting the federal courts exclusive jurisdiction over certain ERISA actions, and granting state courts concurrent jurisdiction over other ERISA actions).

29 U.S.C. § 1132(a)(1)(B) (1994) (granting a plaintiff the right to sue to recover benefits due under a retirement plan).

Legal Texts:

2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 82 (4th ed. 1996) (discussing the express grant of concurrent jurisdiction between federal and state courts).

2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* § 83 (4th ed. 1996) (discussing concurrent jurisdiction where it is not expressly denied).

16 CAL. JUR. 3D *Courts* § 111 (1983) (discussing state rules regarding exclusive or concurrent jurisdiction).

16 CAL. JUR. 3D *Courts* § 112 (1983) (discussing the existence of concurrent jurisdiction between state and federal courts).

Law Review and Journal Articles:

Leslie C. Hallock, *ERISA Primer: What Every Non-ERISA Attorney Should Know*, 12 ME. B.J. 206, 207 (1997) (discussing the use of QDROs under ERISA).

Mary B. Roudebush, *New Domestic Relations Orders for Public Employees*, 25 COLO. LAW. Dec. 1996, at 57 (differentiating between a QDRO and a DRO).

George Lee Flynt, Jr., *ERISA: Reformulating the Federal Common Law for Plan Interpretation*, 32 SAN DIEGO L. REV. 955, 1024, 1026 (1995) (discussing concurrent jurisdiction of state and federal courts under ERISA).

Kimberly A. Kralowec, Comment, *Estoppel Claims Against ERISA Employee Benefit Plans*, 25 U.C. DAVIS L. REV. 487, 562 (1992) (discussing concurrent jurisdiction, with use of federal law for ERISA claims).

LEALLEN FROST

VI. State of California/Fiscal Matters

Superior courts have jurisdiction to hear claims related to state mandates to counties, even where test claims are otherwise pending. Moreover, where the state requires a county to provide a specific level of medical coverage to indigents, the state has mandated the program, and is therefore required to reimburse the county for any expenditures made pursuant to the mandate.

City of San Diego v. California, Supreme Court of California, Decided March 3, 1997, 15 Cal. 4th 68, 931 P.2d 312, 61 Cal. Rptr. 2d 134.

Facts. Prior to 1979, the State of California and the various counties throughout the state shared in paying the costs of Medi-Cal to provide medical coverage for adult MIP's, or those individuals that were economically unable to pay for medical care, but did not otherwise qualify for medical assistance. In July 1979, the Legislature repealed section 14150 of the Welfare and Institutions Code, thus removing the counties' requirement to share in the payment of Medi-Cal costs. In November of that same year, the state adopted section 6 of article XIII B of the California Constitution. Section 6 requires that the state reimburse counties when the state mandates new programs or increased service levels. Then, in 1982, the Legislature acted to exclude most adult MIP's from Medi-Cal.

The state then established MISA to provide funds to counties for adult MIP's now excluded from Medi-Cal. However, when the state decreased funding for San Diego's program in 1989, the city voted to terminate its program for funding medical care for adult MIP's. Upon being sued to enjoin termination of the program, San Diego filed a cross-complaint and writ of mandate against the state, alleging that when the state excluded MIP's from Medi-Cal, and thus placed the burden on the counties to provide Medi-Cal care for this group, the state mandated higher levels of service and a new program, thus bringing its action within section 6.

The trial court determined that the state had mandated a new program and higher levels of service by requiring San Diego to spend $41 million on its own program during the two years in question, and required the state to reimburse San Diego. The court of appeal affirmed this ruling.

Holding. The California Supreme Court considered several issues in determining whether the state had mandated a new program or higher levels of service. First, the court held that the superior court had jurisdiction to hear the original matter, stating that the state courts have original jurisdiction over matters where extraordinary relief in the form of mandamus is sought. While the statutes do require a test claim to be brought first, and while Los Angeles already had a claim pending, the court noted that primary jurisdiction is given to the court hearing the test claim, but the statutes do not exclude other courts from hearing a similar claim. Failing to defer to the primary jurisdiction of another court does not strip a court of its jurisdiction to hear a matter.

Second, the court held that the state's actions did in fact constitute a mandate. While the counties were required previously under section 17000 of the Welfare and Institutions Code to provide Medi-Cal care to indigent individuals, as the state argued, the court noted that this was only required where the individuals were not otherwise provided for, such as by state institutions. The counties were thus relieved of a substantial burden when the state covered such individuals under Medi-Cal. While the state argued that this benefit was only temporary, the court, in considering legislative history, noted that this temporary provision was not the Legislature's intent. Further, the court stated that the Legislature, in its 1982 reforms of Medi-Cal, attempted to transfer responsibility of funding a state mandated program to the counties, the very action section 6 was enacted to prevent.

The court next considered the state's argument that the action was not a mandate because the counties had full discretion to determine eligibility requirements. The court, however, stated that this discretion was limited, and that the counties were required to cover all adult MIP's. As to the state's argument that the counties had further discretion to set service standards, the court held that the statutes actually placed a specific level of service requirement on the counties. The statute required that the service provided must match that of private facilities providing service to non-indigents.

The court reversed the lower courts' rulings that the state had required San Diego to spend $41 million. The court stated that it was the role of the Commission of State Mandates to determine both the level of service required by the state, and any reimbursement due to the city. The court then remanded the action to the Commission to determine these issues, as well as to determine the statutory remedies that San Diego should receive.

REFERENCES

Statutes:

CAL. CONST., art. XII B, § 6 (requiring state reimbursement for mandates placed on local governments).

CAL. CONST., art. VI, § 10 (granting state courts original jurisdiction over actions for mandamus).

CAL. WELF. & INST. CODE § 17000 (West 1991) (requiring local governments to support the indigent when they are not otherwise supported).

CAL. WELF. & INST. CODE § 17001 (West 1991) (allowing the counties to determine standards for aiding the indigent).

CAL. WELF. & INST. CODE § 10000 (West 1991) (setting standard for services provided to the indigent).

Legal Texts:

9 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent & Child* § 335 (9th ed. 1989) (discussing a county's obligation to support indigent individuals).

5 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* § 444 (9th ed. 1988) (discussing termination of a mandamus proceeding).

51 CAL. JUR. 3D *Public Aid & Welfare* § 28 (1979) (discussing the duties of a county to provide for the indigent).

51 CAL. JUR. 3D *Public Aid & Welfare* § 34 (1979) (discussing the right of a county to require property from the individual for reimbursement for aid to indigents).

Law Review and Journal Articles:

Mark Neal Aaronson, *Scapegoating the Poor: Welfare Reform All Over Again and the Undermining of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213, 256 (1996) (discussing counties' requirement to support the indigent).

Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration, Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509, 1572 (1995) (discussing limitation of aid to indigent undocumented women).

Clark Allen Peterson, Note, *The Resurgence of Durational Residence Requirements for the Receipt of Welfare Funds*, 27 LOY. L.A. L. REV. 305, 332-33 (1993) (discussing discrimination against new residents that are indigent).

Kathryn Saenz Duke, *Indigent Medical Care in California: Still Invisible?*, 25 PAC. L.J. 21 (1993) (discussing California's provision of medical care for indigents).

LEALLEN FROST

VII. Suretyship

A "pay-if-paid" provision in an agreement between a general contractor and a subcontractor purporting to make the general contractor receiving payment from the property owner a condition precedent to the subcontractor's payment, is invalid as against public policy, and the general contractor's surety is liable for the payment, because enforcement of the provision would effectuate an implied waiver of the subcontractor's mechanic's lien rights granted under article XIV, section 3 of the California Constitution.

Clarke Corp. v. Safeco Insurance Co. of America, Supreme Court of California, Decided June 26, 1997, 15 Cal. 4th 882, 938 P.2d 372, 64 Cal. Rptr. 2d 578.

Facts. The plaintiff subcontractors entered into agreements with the codefendant general contractor concerning work on a commercial building project. The subcontracts contained a "pay-if-paid" provision which made payment by the building owner to the general contractor a condition precedent to the general contractor's obligation to pay the subcontractors for their work. Three of the four subcontracts also contained addendums reiterating the pay-if-paid limitation, but also purporting to preserve the mechanic's lien rights of the subcontractors.

As part of the general contract agreement, the general contractor obtained a labor and material payment bond from the codefendant Safeco Insurance Company to protect the owner from mechanic's lien claims. By the terms of the bond, both the general contractor, as principal, and the insurance company as surety, were obligated to pay any valid mechanic's lien claims resulting from work on the project.

Prior to completion of the project, the owner ceased payments to the general contractor, who then refused to pay the subcontractors. The subcontractors recorded mechanic's liens and filed suit against both the general contractor and the insurance company, attempting to recover under the payment bond. The actions were consolidated and the court granted judgment for the subcontractors and against the insurance company. The court of appeal affirmed.

Holding. The supreme court affirmed the decision of the court of appeal, holding that pay-if-paid clauses violate California public policy because they effectuate an indirect waiver of a subcontractor's constitutionally protected mechanic's lien rights in the event of nonpayment by the property owner.

The codefendant insurance company argued that their liability as surety under the payment bond is only equal to that of the general contractor. The insurance company contended that because the owner failed to pay the general contractor, a condition precedent to the general contractor is obligation to pay the subcontractors, it did not owe any payment to the subcontractors under the bond. The court indicated that this contractual analysis was based on the insurance company's assumption that the pay-if-paid clause was valid, but found that assumption to be incorrect.

The court noted that article XIV, section 3 of the California Constitution provides that any person who works on or furnishes materials for improvements to real property shall have a lien on the property for the value of the labor or materials furnished. The court also noted that California Civil Code section 3262(d) provides that a waiver and release of mechanic's lien rights is unenforceable unless the waiver is in conjunction with payment or a promise to pay the amount owed on the lien. The court reasoned that because lack of future payments by a defaulting owner in these situations is virtually certain, a pay-if-paid clause would indefinitely postpone a subcontractor's right to receive payment, effectively constituting an express waiver of mechanic's lien rights which, under the state constitution and civil code, violates strong public policy.

In defense of the pay-if-paid contractual provisions, the insurance company also argued that public policy favors freedom of contract, and, therefore, pay-if-paid provisions should be upheld because they allow the general contractor and subcontractors to mutually agree and allocate the risk of owner default. The court disagreed stating that the legislature had determined that policy considerations may override freedom of contract concerns when they specifically restrict the freedom to waive mechanic's lien rights, unless waiver is accompanied by payment or promise of payment.

REFERENCES

Statutes:

CAL. CONST. art. XIV, § 3 (granting mechanic's lien rights to anyone furnishing materials or labor onto property).

CAL. CIV. CODE § 3262(d) (West 1993 & Supp. 1998) (providing that waivers of mechanic's lien rights are valid only if accompanied by payment or promise of payment).

Legal Texts:

44 CAL. JUR. 3D *Mechanic's Liens* §§ 46-52 (1978 & Supp. 1997) (discussing construction bonds in the context of liability for mechanic's liens).

59 CAL. JUR. 3D *Suretyship & Guaranty* §§ 112-120 (1980 & Supp. 1997) (discussing rights and remedies of parties to a contractor's surety bond).

3 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Security Transactions in Real Property* §§ 58-61 (9th ed. 1987 & Supp. 1997) (discussing mechanic's lien rights).

Law Review and Journal Articles:

Richard S. Wisner & James A. Knox, Jr., *The ABC's of Contractor's Surety Bonds*, 82 ILL. B.J. 244 (1994) (discussing various forms of contractor's surety bonds).

Lynn M. Schubert, George W. Thomas, Christopher Franklin & Samuel Arena, Jr., *Recent Developments in Fiduciary and Surety Law*, 31 TORT & INS. LAW J. 269 (1996) (discussing New York's law concerning pay-when-paid provisions in subcontracts).

Michael Noone & Robert Benson, *The Pay When Paid Dilemma*, 25 COLO. LAW., Nov. 1996, at 79 (1996) (discussing pay-when-paid provisions in construction contracts).

Gerald B. Kirksey, *"Minimum Decencies"—A Proposed Resolution of the "Pay-When-Paid"/"Pay-If-Paid" Dichotomy*, 12 CONSTRUCTION LAW., Jan. 1992, at 1 (proposing a general presumption of unconscionability for pay-when-paid provisions).

Gerald B. Kirksey & Sherri L. Brown, *The "Pay-When-Paid"/"Pay-If-Paid" Dichotomy and the Florida Trilogy—Bright Line or Murky Fog?*, 8 CONSTRUCTION LAW., Oct. 1991, at 8 (discussing pay-when-paid provisions in construction contracts).

JOHN W. CORRINGTON

VIII. Torts

When a plaintiff sues an arresting officer and the city for false arrest, damages are limited to the period of incarceration subsequent to the arrest, but prior to the beginning of legal process.

Asgari v. City of Los Angeles, Supreme Court of California, Decided June 2, 1997, 15 Cal. 4th 744, 937 P.2d 273, 63 Cal. Rptr. 2d 842.

Facts. Following an undercover narcotics investigation, the plaintiff was arrested and prosecuted for possession of heroin with the intent to sell the narcotics. As a result of his arrest, the plaintiff was incarcerated for seven months and six days, but later acquitted on all charges. Subsequent to his release, the plaintiff brought suit against the arresting officers and the City of Los Angeles for false arrest, maintaining that the defendants framed him and that the arrest constituted an unlawful restraint on his personal liberty.

The plaintiff urged the trial court to apply the federal liability standard which allows a plaintiff to recover damages for the entire period of incarceration–even after the beginning of legal process. The trial court, relying on the applicable federal law, instructed the jury that if they concluded that the defendants acted maliciously or recklessly in disregarding the plaintiff's rights while he was arrested, then the plaintiff was entitled to damages for his total incarceration, including the period after legal process began. Based on the evidence presented and the trial court's instruction, the jury found the defendants guilty, and awarded the plaintiff $1,327,000 in compensatory and punitive damages for his seven months of incarceration. The court of appeal affirmed the lower court judgment in part and reversed in part, holding that the award of damages for the entire period of incarceration was proper, but reversed those damages which the court determined were duplicative.

Holding. Reversing the court of appeal, the supreme court held that the federal jury instruction was improper and "did not reflect the applicable California law." The court interpreted the California Tort Claims Act, and more specifically section 821.6, to hold public employees liable for false arrest, while immunizing public employees from liability for malicious prosecution. The court equated the immunity from liability for malicious

prosecution as a limitation on a plaintiff's claim for damages incident to false arrest. Thus, the court concluded that the plaintiff was precluded from recovering damages for the period after legal process began.

The court further held that the federal standard set forth in *Smiddy v. Varney*, which creates a rebuttable presumption as to liability after legal process has began, overlooks the legislative intent of California statutory law. The court asserted that the Legislature, in creating the California Tort Claims Act, clearly understood the difference between liability for false arrest and malicious prosecution and set forth different liability standards accordingly. The court further reasoned that "allowing a plaintiff . . . to recover damages suffered as a result of incarceration after the arrestee has been arraigned . . . would nullify, in part, the statutory immunity for malicious prosecution." Therefore, based on the legislative intent and statutory interpretation of the California Tort Claims Act, the court held that the plaintiff could recover damages for the seven days of incarceration prior to his arraignment, but was precluded from recovering for the remainder of his incarceration.

REFERENCES

Statutes:

CAL. GOV'T CODE § 821.6 (West 1995 & Supp. 1998) (dictating that a public employee is not liable for injuries caused within the scope of their employment even if he acts maliciously).

Case Law:

Jackson v. San Diego, 121 Cal. App. 3d 579, 175 Cal. Rptr. 395 (1981) (holding that the Legislature intended to place a ceiling on damages for false arrest or imprisonment—the limitation is the recovery of damages for incarceration beginning with the false arrest, but ending when the lawful process begins).

Randle v. City and County of San Francisco, 186 Cal. App. 3d 449, 230 Cal. Rptr. 901 (1986) (explaining that under Government Code § 821.6, both the police officers and the public prosecutor are immune from civil liability).

Smiddy v. Varney, 665 F.2d 261 (1981) (holding that "where police officers act maliciously or with reckless disregard for the rights of an arrested person, they are liable for damages suffered by the arrested per-

son even after the district attorney files charges of the presumption of independent judgment by the district attorney is rebutted").

Legal Texts:

5 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* § 244 (9th ed. 1988 & Supp. 1997) (stating that immunity under Government Code § 821.6 is for malicious prosecution, not false imprisonment).

6 CAL. JUR. 3D *Assault and Other Willful Torts* § 47 (1988 & Supp. 1997) (defining false imprisonment as the unlawful violation of the personal liberty of another).

6 CAL. JUR. 3D *Assault and Other Willful Torts* § 48 (1988 & Supp. 1997) (noting that false arrest and false imprisonment are not separate torts).

6 CAL. JUR. 3D *Assault and Other Willful Torts* §§ 51-60 (1988 & Supp. 1997) (outlining the elements a plaintiff must prove in order to establish a false arrest).

Law Review and Journal Articles:

Izetta Ray Jackson, *New Class of Plaintiffs in False Imprisonment Actions*, 64 CAL. L. REV. 602 (1976) (discussing judicial interpretation of the California Tort Claims Act).

Myrna K. Greenberg, Smiddy v. Varney*: The Brave New World of Police Immunities Under Section 1983*, 16 LOY. L.A. L. REV. 173 (1983) (comparing Supreme Court precedent of false imprisonment under section 1983 and the 9th Circuit rebuttable presumption approach to liability).

James Arnold, *Governmental Liability for Torts of Employees—The End of Sovereign Immunity in California*, 5 SANTA CLARA L. REV. 81 (1965) (outlining the California Tort Claims Act which replaced the sovereign

immunity public employees enjoyed from civil liability with a more intrusive liability standard).

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