

PUBLICATION UPDATE

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California Forms of Pleading and Practice Annotated

Publication 181

Release 242

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HIGHLIGHTS

- **COVID-19 Emergency Court Rules.** Listed below are the emergency rules changes to the California Rules of Court to address the Covid-19 Virus,, including the March 11, 2022 amendments with sunset provisions, on such topics as:
 - Tolling or extending time because of a public emergency
 - Unlawful detainers
 - Use of technology for remote appearances
 - Emergency bail schedule
 - Personal appearance waivers of defendants
 - Juvenile dependency proceedings
- Juvenile delinquency proceedings
- Temporary restraining or protective orders
- Toll of statutes of limitation for civil causes
- Extension of time to bring civil action to trial
- Depositions through remote electronic means.
- **2022 Legislation, Rules of Court, Regulations, Judicial Council Forms, and Latest Cases.** This release updates various chapters throughout the publication with the changes to California legislation and regulations effective 2022, as well as the latest 2022 changes to the Rules of Court and Judicial Council Forms. This release also updates various

chapters with the latest state and federal case law opinions.

Important new developments are added in other areas of law, including:

- Attorneys
- Civil Procedure
- Contracts and Commercial Law
- Corporations
- Elections
- Employment Law
- Family Law
- Intellectual Property
- Juvenile Law
- Probate
- Products Liability
- Public Administrative Law
- Torts
- Trial

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COVID-19 EMERGENCY COURT RULES.

The following are the California

Rules of Court and Emergency Rules issued by the California Supreme Court as Appendix I, amended effective March 11, 2022. The first entry is the amended Cal. Rules of Court, Rule 8.66, and the subsequent entries are the Emergency Rules Related to COVID-19, adopted as Appendix I to the Rules of Court.

Rule 8.66. Tolling or extending time because of public emergency

(a) **Emergency tolling or extensions of time.** If made necessary by the occurrence or danger of an earthquake, fire, public health crisis, or other public emergency, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:

- (1) Toll for up to 30 days or extend by no more than 30 days any time periods specified by these rules; or
- (2) Authorize specified courts to toll for up to 30 days or extend by no more than 30 days any time periods specified by these rules. (Subd (a) amended effective January 1, 2007.)

(Subd (a) amended effective April 4, 2020.)

(b) **Applicability of order.**

- (1) An order under (a)(1) must specify the length of the tolling or extension and whether

the order applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.

- (2) An order under (a)(2) must specify the length of the authorized tolling or extension.

(Subd (b) amended effective April 4, 2020.)

- (c) **Renewed orders.** If made necessary by the nature or extent of the public emergency, with or without a request, the Chair of the Judicial Council may renew an order issued under this rule prior to its expiration. An order may be renewed for additional periods not to exceed 30 days per renewal.

(Subd (c) amended effective April 4, 2020; previously amended effective January 1, 2007.)

Rule 8.66 amended effective April 4, 2020; previously amended and renumbered effective January 1, 2007; repealed and adopted as rule 45.1 effective January 1, 2005.

EMERGENCY RULES RELATED TO COVID-19 (As of 1/1/22)

Emergency rule 1. Unlawful detainers

- (a) **Application.** Notwithstanding any other law, including Code of Civil Procedure sections 1166, 1167, 1169, and 1170.5, this rule applies

to all actions for unlawful detainer.

- (b) **Issuance of summons.** A court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on the record, that the action is necessary to protect public health and safety.

- (c) **Entry of default.** A court may not enter a default or a default judgment for restitution in an unlawful detainer action for failure of defendant to appear unless the court finds both of the following:

- (1) The action is necessary to protect public health and safety; and
- (2) The defendant has not appeared in the action within the time provided by law, including by any applicable executive order.

- (d) **Time for trial.** If a defendant has appeared in the action, the court may not set a trial date earlier than 60 days after a request for trial is made unless the court finds that an earlier trial date is necessary to protect public health and safety. Any trial set in an unlawful detainer proceeding as of April 6, 2020 must be continued at least 60 days from the initial date of trial.

- (e) **Sunset of rule.** This rule will remain in effect through September 1, 2020, or until amended or repealed by the Judicial Council. Notwith-

standing Code of Civil Procedure section 1170.5 and this subdivision, any trial date set under (d) as of September 1, 2020, will remain as set unless a court otherwise orders.

(Subd (e) amended effective August 13, 2020.)

Emergency Rule 1 amended effective August 13, 2020.

Emergency rule 2. Judicial foreclosures—suspension of actions

Notwithstanding any other law, this rule applies to any action for foreclosure on a mortgage or deed of trust brought under chapter 1, title 10, of part 2 of the Code of Civil Procedure, beginning at section 725a, including any action for a deficiency judgment, and provides that, through September 1, 2020, or until this rule is amended or repealed by the Judicial Council:

- (1) All such actions are stayed, and the court may take no action and issue no decisions or judgments unless the court finds that action is required to further the public health and safety.
- (2) The period for electing or exercising any rights under that chapter, including exercising any right of redemption from a foreclosure sale or petitioning the court in relation to such a right, is extended.

Emergency Rule 2 amended effective August 13, 2020.

Advisory Committee Comment

The provision for tolling any applicable statute of limitations, in prior subdivision (2), has been removed as unnecessary because the tolling provisions in emergency rule 9 apply to actions subject to this rule.

Emergency rule 3. Use of technology for remote appearances

- (a) **Remote appearances.** Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts must conduct criminal proceedings and court operations as follows:

- (1) Courts may require that criminal proceedings and court operations be conducted remotely.
- (2) In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the 3 court may conduct any criminal proceeding remotely. As used in this rule, “consent of the defendant” means that the consent of the defendant is required only

for the waiver of the defendant's appearance as provided in emergency rule 5. For good cause shown, the court may require any witness to personally appear in a particular proceeding.

- (3) Conducting criminal proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding.

(Subd (a) amended effective January 1, 2022.)

- (b) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

Emergency Rule 3 amended effective March 11, 2022; Subd (b) amended effective March 11, 2022; adopted April 6, 2020; previously amended effective January 1, 2022.

Emergency rule 4. Emergency Bail Schedule [Repealed]

Emergency rule 4 repealed effective June 20, 2020.

Emergency rule 5. Personal appearance waivers of defendants during health emergency

- (a) **Application.** Notwithstanding any other law, including Penal Code sections 865 and 977, this rule applies to all criminal proceedings except cases alleging murder with special circumstances and cases in which the defendant is currently incarcerated in state prison, as governed by Penal Code section 977.2.

- (b) **Types of personal appearance waivers.**

- (1) With the consent of the defendant, the court must allow a defendant to waive his or her personal appearance and to appear remotely, either through vide or telephonic appearance, when the technology is available.
- (2) With the consent of the defendant, the court must allow a defendant to waive his or her appearance and permit counsel to appear on his or her behalf. The court must accept a defendant's waiver of appearance or personal appearance when:
- (A) Counsel for the defendant makes an on the record oral representation that counsel has fully discussed the waiver and its implications with the de-

defendant and the defendant has authorized counsel to proceed as counsel represents to the court;

(B) Electronic communication from the defendant as confirmed by defendant's counsel; or

(C) Any other means that ensures the validity of the defendant's waiver.

(c) **Consent by the defendant.**

(1) For purposes of arraignment and entry of a not guilty plea, consent means a knowing, intelligent, and voluntary waiver of the right to appear personally in court. Counsel for the defendant must state on the record at each applicable hearing that counsel is proceeding with the defendant's consent.

(2) For purposes of waiving time for a preliminary hearing, consent also means a knowing, intelligent, and voluntary waiver of the right to hold a preliminary hearing within required time limits specified either in Penal Code section 859b or under emergency orders issued by the Chief Justice and Chair of the Judicial Council.

(3) The court must accept defense counsel's representation that the defendant understands and agrees with waiving any right to appear unless the court has specific concerns in a particular matter about the validity of the waiver.

(d) **Appearance through counsel.**

(1) When counsel appears on behalf of a defendant, courts must allow counsel to do any of the following:

(A) Waive reading and advisement of rights for arraignment.

(B) Enter a plea of not guilty.

(C) Waive time for the preliminary hearing.

(2) For appearances by counsel, including where the defendant is either appearing remotely or has waived his or her appearance and or counsel is appearing by remote access, counsel must confirm to the court at each hearing that the appearance by counsel is made with the consent of the defendant.

(e) **Conduct of remote hearings.**

(1) With the defendant's consent, a defendant may appear remotely for any pretrial criminal proceeding.

- (2) Where a defendant appears remotely, counsel may not be required to be personally present with the defendant for any portion of the criminal proceeding provided that the audio and/or video conferencing system or other technology allows for private communication between the defendant and his or her counsel. Any private communication is confidential and privileged under Evidence Code section 952.

(f) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

Emergency rule 6. Emergency orders: juvenile dependency proceedings

(a) **Application.** This rule applies to all juvenile dependency proceedings filed or pending until the state of emergency related to the COVID-19 pandemic is lifted.

(b) **Essential hearings and orders.** The following matters should be prioritized in accordance with existing statutory time requirements.

- (1) Protective custody warrants filed under Welfare and Institutions Code section 340.

- (2) Detention hearings under Welfare and Institutions Code section 319. The court is required to determine if it is contrary to the child's welfare to remain with the parent, whether reasonable efforts were made to prevent removal, and whether to vest the placing agency with temporary placement and care.

(3) Psychotropic medication applications.

(4) Emergency medical requests.

(5) A petition for reentry of a nonminor dependent.

(6) Welfare and Institutions Code section 388 petitions that require an immediate response based on the health and safety of the child, which should be reviewed for a prima facie showing of change of circumstances sufficient to grant the petition or to set a hearing. The court may extend the final ruling on the petition beyond 30 days.

(c) **Foster care hearings and continuances during the state of emergency**

- (1) A court may hold any proceeding under this rule via remote technology consistent with

rule 5.531 and emergency rule 3.

- (2) At the beginning of any hearing at which one or more participants appears remotely, the court must admonish all the participants that the proceeding is confidential and of the possible sanctions for violating confidentiality.
- (3) The child welfare agency is responsible for notice of remote hearings unless other arrangements have been made with counsel for parents and children. Notice is required for all parties and may include notice by telephone or other electronic means. The notice must also include instructions on how to participate in the court hearing remotely.
- (4) Court reports
- (A) Attorneys for parents and children must accept service of the court report electronically.
- (B) The child welfare agency must ensure that the parent and the child receive a copy of the court report on time.
- (C) If a parent or child cannot receive the report electronically, the child welfare agency

must deliver a hard copy of the report to the parent and the child on time.

- (5) Nothing in this subdivision prohibits the court from making statutorily required findings and orders, by minute order only and without a court reporter, by accepting written stipulations from counsel when appearances are waived if the stipulations are confirmed on the applicable Judicial Council forms or equivalent local court forms.
- (6) If a court hearing cannot occur either in the courthouse or remotely, the hearing may be continued up to 60 days, except as otherwise specified.
- (A) A dispositional hearing under Welfare and Institutions Code section 360 should not be continued more than 6 months after the detention hearing without review of the child's circumstances. In determining exceptional circumstances that justify holding the dispositional hearing more than 6 months after the child was taken into protective custody, the impact of the state of emergency

related to the COVID-19 pandemic must be considered.

- i. If the dispositional hearing is continued more than 6 months after the start date of protective custody, a review of the child must be held at the 6-month date. At the review, the court must determine the continued necessity for and appropriateness of the placement; the extent of compliance with the case plan or available services that have been offered; the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement; and the projected likely date by which the child may return home or placed permanently.
 - ii. The court may continue the matter for a full hearing on all dispositional findings and orders.
- (B) A judicial determination of reasonable efforts must be made within 12 months of the date a child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the

court must review the case to determine if the agency has made reasonable efforts to return the child home or arrange for the child to be placed permanently. This finding can be made without prejudice and may be reconsidered at a full hearing.

- (7) During the state of emergency related to the COVID-19 pandemic, previously authorized visitation must continue, but the child welfare agency is to determine the manner of visitation to ensure that the needs of the family are met. If the child welfare agency changes the manner of visitation for a child and a parent or legal guardian in reunification, or for the child and a sibling(s), or a hearing is pending under Welfare and Institutions Code section 366.26, the child welfare agency must notify the attorneys for the children and parents within 5 court days of the change. All changes in manner of visitation during this time period must be made on a case by case basis, balance the public health directives and best interest

of the child, and take into consideration whether in-person visitation may continue to be held safely. Family time is important for child and parent well-being, as well as for efforts toward reunification. Family time is especially important during times of crisis. Visitation may only be suspended if a detriment finding is made in a particular case based on the facts unique to that case. A detriment finding must not be based solely on the existence of the impact of the state of emergency related to the COVID-19 pandemic or related public health directives.

- (A) The attorney for the child or parent may ask the juvenile court to review the change in manner of visitation. The child or parent has the burden of showing that the change is not in the best interest of the child or is not based on current public health directives.
- (B) A request for the court to review the change in visitation during this time period must be made within 14 court days of the change. In reviewing

the change in visitation, the court should take into consideration the factors in (c)(7).

- (d) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

Advisory Committee Comment

When courts are unable to hold regular proceedings because of an emergency that has resulted in an order as authorized under Government Code section 68115, federal timelines do not stop. Circumstances may arise where reunification services to the parent, including visitation, may not occur or be provided. The court must consider the circumstances of the emergency when deciding whether to extend or terminate reunification services and whether services were reasonable given the state of the emergency. (Citations: 42 U.S.C. § 672(a)(1)–(2), (5); 45 CFR § 1355.20; 45 CFR § 1356.21 (b)–(d); 45 C.F.R. § 1356.71(d)(1)(iii); Child Welfare Policy Manual, 8.3A.9 Title 1 IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, Question 2(www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=92)); Letter dated March 27, 2020, from Jerry Milner, Associate Commissioner, Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services.)

Emergency rule 7. Emergency orders: juvenile delinquency proceedings

(a) **Application.** This rule applies to all proceedings in which a petition has been filed under Welfare and Institutions Code section 602 in which a hearing would be statutorily required during the state of emergency related to the COVID-19 pandemic.

(b) **Juvenile delinquency hearings and orders during the state of emergency.**

(1) A hearing on a petition for a child who is in custody under Welfare and Institutions Code section 632 or 636 must be held within the statutory timeframes as modified by an order of the court authorized by Government Code section 68115. The court must determine if it is contrary to the welfare of the child to remain in the home, whether reasonable services to prevent removal occurred, and whether to place temporary placement with the probation agency if the court will be keeping the child detained and out of the home.

(2) If a child is detained in custody and an in-person appearance is not feasible due to the

state of emergency, courts must make reasonable efforts to hold any statutorily required hearing for that case via remote appearance within the required statutory time frame and as modified by an order of the court authorized under Government Code section 68115 for that proceeding. If a remote proceeding is not a feasible option for such a case during the state of emergency, the court may continue the case as provided in (d) for the minimum period of time necessary to hold the proceedings.

(3) Without regard to the custodial status of the child, the following hearings should be prioritized during the state of emergency related to the COVID-19 pandemic:

(A) Psychotropic medication applications.

(B) All emergency medical requests.

(C) A petition for reentry of a nonminor dependent.

(D) A hearing on any request for a warrant for a child.

(E) A probable cause determination for a child who has been detained but has not had a de-

tention hearing within the statutory time limits.

- (4) Notwithstanding any other law, and except as described in (5), during the state of emergency related to the COVID-19 pandemic, the court may continue for good cause any hearing for a child not detained in custody who is subject to its juvenile delinquency jurisdiction until a date after the state of emergency has been lifted considering the priority for continued hearings in (d).
- (5) For children placed in foster care under probation supervision, a judicial determination of reasonable efforts must be made within 12 months of the date the child enters foster care to maintain a child's federal title IV-E availability. If a permanency hearing is continued beyond the 12-month date, the court must nevertheless hold a review to determine if the agency has made reasonable efforts to return the child home or place the child permanently. This finding can be made without prejudice and may be

reconsidered at a full hearing.

(c) Proceedings with remote appearances during the state of emergency.

- (1) A court may hold any proceeding under this rule via remote technology consistent with rule 5.531 and emergency rule 3.
- (2) At the beginning of any hearing conducted with one or more participants appearing remotely, the court must admonish all the participants that the proceeding is confidential and of the possible sanctions for violating confidentiality.
- (3) The court is responsible for giving notice of remote hearings, except for notice to a victim, which is the responsibility of the prosecuting attorney or the probation department. Notice is required for all parties and may include notice by telephone or other electronic means. The notice must also include instructions on how to participate in the hearing remotely.
- (4) During the state of emergency, the court has broad discretion to take evidence in the manner most compatible with the remote

hearing process, including but not limited to taking testimony by written declaration. If counsel for a child or the prosecuting attorney objects to the court's evidentiary procedures, that is a basis for issuing a continuance under (d).

- (d) **Continuances of hearings during the state of emergency.** Notwithstanding any other law, the court may for good cause continue any hearing other than a detention hearing for a child who is detained in custody. In making this determination, the court must consider the custody status of the child, whether there are evidentiary issues that are contested, and, if so, the ability for those issues to be fairly contested via a remote proceeding.

- (e) **Extension of time limits under Welfare and Institutions Code section 709.** In any case in which a child has been found incompetent under Welfare and Institutions Code section 709 and that child is eligible for remediation services or has been found to require secure detention, any time limits imposed by section 709 for provision of services or for secure detention are tolled for the period of the state of emergency if the court finds that remediation services could not be provided be-

cause of the state of emergency.

- (f) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council.

Advisory Committee Comment

This emergency rule is being adopted in part to ensure that detention hearings for juveniles in delinquency court must be held in a timely manner to ensure that no child is detained who does not need to be detained to protect the child or the community. The statutory scheme for juveniles who come under the jurisdiction of the delinquency court is focused on the rehabilitation of the child and thus makes detention of a child the exceptional practice, rather than the rule. Juvenile courts are able to use their broad discretion under current law to release detained juveniles to protect the health of those juveniles and the health and safety of the others in detention during the current state of emergency related to the COVID-19 pandemic.

Emergency rule 8. Emergency orders: temporary restraining or protective orders

- (a) **Application.** Notwithstanding any other law, this rule applies to any emergency protective order, temporary restraining order, or criminal protective order that was requested, issued, or set to expire during the state of emergency related to the COVID-19 pandemic. This includes requests and orders

issued under Family Code sections 6250 or 6300, Code of Civil Procedure sections 527.6, 527.8, or 527.85, Penal Code sections 136.2, 18125 or 18150, or Welfare and Institutions Code sections 213.5, 304, 362.4, or 15657.03, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or parentage proceeding under Family Code section 6221.

(b) Duration of orders.

- (1)** Any emergency protective order made under Family Code section 6250 that is issued during the state of emergency must remain in effect for up to 30 days from the date of issuance.
- (2)** Any temporary restraining order or gun violence emergency protective order issued or set to expire during the state of emergency related to the COVID-19 pandemic must remain in effect for a period of time that the court determines is sufficient to allow for a hearing on the long-term order to occur, for up to 90 days.
- (3)** Any criminal protective order, subject to

this rule, set to expire during the state of emergency, must be automatically extended for a period of 90 days, or until the matter can be heard, whichever occurs first.

- (4)** Upon the filing of a request to renew a restraining order after hearing that is set to expire during the state of emergency related to the COVID-19 pandemic, the current restraining order after hearing must remain in effect until a hearing on the renewal can occur, for up to 90 days from the date of expiration.

(Subd (b) amended effective April 20, 2020.)

(c) Ex parte requests and requests to renew restraining orders.

- (1)** Courts must provide a means for the filing of ex parte requests for temporary restraining orders and requests to renew restraining orders. Courts may do so by providing a physical location, drop box, or, if feasible, through electronic means.
- (2)** Any ex parte request and request to renew restraining orders may be filed using an electronic signature by a

party or a party's attorney.

(Subd (c) amended effective April 20, 2020.)

- (d) **Service of Orders.** If a respondent appears at a hearing by video, audio, or telephonically, and the court grants an order, in whole or in part, no further service is required upon the respondent for enforcement of the order, provided that the court follows the requirements of Family Code section 6384.

- (e) **Entry of orders into California Law Enforcement Telecommunications System.** Any orders issued by a court modifying the duration or expiration date of orders subject to this rule, must be transmitted to the Department of Justice through the California Law Enforcement Telecommunications System (CLETS), as provided in Family Code section 6380, without regard to whether they are issued on Judicial Council forms, or in another format during the state of emergency.

- (f) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council. *Emergency Rule 8 amended effective March 11, 2022; adopted effective April 20, 2020; previously amended effective April 20, 2020.*

Emergency rule 9. Tolling statutes of limitations for civil causes of action

- (a) **Tolling statutes of limitations over 180 days.** Notwithstanding any other law, 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.

(Subd (a) amended effective May 29, 2020.)

- (b) **Tolling statutes of limitations of 180 days or less.** Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020.

(Subd (b) amended effective May 29, 2020.)

- (c) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council. This sunset does not nullify the effect of the tolling of the statutes of limitation and repose under the rule.

(Subd (b) amended effective March 11, 2022.)

Emergency Rule 9 amended effective March 11, 2022; adopted effective April 6, 2022; previously amended May 29, 2020.

Advisory Committee Comment

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. The term “civil causes of action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of a civil nature”]; special proceedings of a civil nature include all proceedings in title 3 of the code, including mandamus actions under §§ 1085, 1088.5, and 1094.5—all the types of petitions for writ made for California Environmental Quality Act (CEQA) and land use challenges]; see also Pub. Resources Code, § 21167(a)–(e) [setting limitations periods for civil “action[s]” under CEQA].)

The rule also applies to statutes of limitations on filing of 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.

Subdivision (c). The sunset of the rule does not nullify the effect of the tolling of the statutes of limitation and repose established by the rule. Depending on the specific facts of the case and the applicable statute of limitation or repose, the effect of the tolling may survive beyond the sunset date of the rule. For example, if the right to file a cause of action subject to the four-year statute of limitation in Code of Civil Procedure section 337 first accrued on February 15, 2020, the statute of limitation, having been tolled from April 6, 2020, until October 1, 2020, under

subdivision (a), would expire in August 2024 rather than February 2024.

Emergency rule 10. Extensions of time in which to bring a civil action to trial

- (a) Extension of five years in which to bring a civil action to trial.** Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months.
- (b) Extension of three years in which to bring a new trial.** Notwithstanding any other law, including Code of Civil Procedure section 583.320, for all civil actions filed on or before April 6, 2020, if a new trial is granted in the action, the three years provided in section 583.320 in which the action must again be brought to trial is extended by six months for a total time of three years and six months. Nothing in this subdivision requires that an action must again be brought to trial before expiration of the time prescribed in (a).
- (c) Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the Judicial Council. This sunset does not nullify the effect of the extension of time in which to bring a civil action to trial under the rule.

Advisory Committee Comment

The sunset of the rule does not nullify the effect of the six-month extension established by the rule for all civil actions filed on or before April 6, 2020. Depending on the specific facts of the case, the effect of the extension may survive beyond the sunset date of the rule. For example, if a civil action subject to Code of Civil Procedure section 583.310 was filed on February 15, 2020, the time in which to bring the action to trial would fall in August 2025, have been extended by six months for a total time of five years and six months, rather than February 2025.

Emergency rule 11. Depositions through remote electronic means

Emergency rule 11 repealed effective November 13, 2020.

Emergency rule 12. Electronic service

Emergency rule 12 repealed effective November 13, 2020.

Emergency rule 13. Effective date for requests to modify support

- (a) **Application.** Notwithstanding any other law, including Family Code sections 3591, 3603, 3653, and 4333, this rule applies to all requests to modify or terminate child, spousal, partner, or family support. For the purpose of this rule, “request” refers to *Request for Order* (form FL-300), *Notice of Motion (Governmental)* (form FL-680), or other moving pa-

pers requesting a modification of support.

- (b) **Effective date of modification.** Except as provided in Family Code section 3653(b), an order modifying or terminating a support order may be made effective as of the date the request and supporting papers are mailed or otherwise served on the other party, or other party’s attorney when permitted. Nothing in this rule restricts the court’s discretion to order a later effective date.
- (c) **Service of filed request.** If the request and supporting papers that were served have not yet been filed with the court, the moving party must also serve a copy of the request and supporting papers after they have been filed with the court on the other party, or other party’s attorney when permitted. If the moving party is the local child support agency and the unfiled request already has a valid court date and time listed, then subsequent service of the request is not required.
- (d) **Court discretion.** Nothing in this rule is meant to limit court discretion or to alter rule 5.92 or 5.260 regarding which moving papers are required to request a modification of support.
- (e) **Sunset of rule.** This rule will sunset on June 30, 2022, unless otherwise amended or repealed by the

Judicial Council.

Emergency Rule 13 amended effective March 11, 2022; adopted effective April 20, 2020.

Release 242 of California Forms of Pleading and Practice Annotated updates the publication in many areas noted in more detail below.

ATTORNEYS

In-House Attorney's Contingency Fee Agreement Must Be in Writing. In *Missakian v. Amusement Industry, Inc.* (2021) 69 Cal. App. 5th 630, 643, 285 Cal. Rptr. 3d 23, the court of appeal held that the fact that the attorney is an in-house attorney does not relieve the attorney of the obligation to comply with Bus. & Prof. Code § 6147, including the requirement to put the specifics of the contingency fee agreement into a writing signed by both parties. See Ch. 72, *Attorney Practice and Ethics*, § 72.196[2].

Retainer Agreement Allowing Attorney to Settle Without Client's Consent Void. In *Amjadi v. Brown* (2021) 68 Cal. App. 5th 383, 389, 283 Cal. Rptr. 3d 448, the court of appeal held that an attorney may not settle a client's case over the client's objection and any provision of a retainer agreement purporting to give an attorney such authority violates the Rules of Professional Conduct and is void. See Ch. 72, *Attorney Practice and Ethics*, § 72.196[9].

CIVIL PROCEDURE

Abatement—Concurrent Jurisdiction. In *In re Marriage of Thompson* (2022) 2022 Cal. App. LEXIS

68, *7, the court of appeal held that the trial court properly ordered a California case abated when a Massachusetts court acquired jurisdiction over the parties first even though the defendant was first served in the California case. See Ch. 3, *Abatement of Actions*, § 3.57[1].

Notary Public—Liability. In *North American Title Co., Inc. v. Gugasyan* (2021) 73 Cal. App. 5th 380, the court affirmed summary judgment in favor of a notary in a negligence action brought by the escrow holder based on financial losses arising from an impersonator's fraudulently obtained loans, because the documents shown to the notary by the impersonator complied with the safe-harbor requirements under Civ. Code § 1185. See Ch. 9, *Acknowledgments*, § 9.14.

Subject Matter Jurisdiction—Generally. *Vallejo v. Superior Court* (2021) 73 Cal.App.5th 132, 140, 288 Cal. Rptr. 3d 150, holds that a lack of jurisdiction in its fundamental or strict sense results in an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties. See Ch. 324, *Jurisdiction: Subject Matter*, § 324.84[14][a].

Subject Matter Jurisdiction—Generally. *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.* (2021) 71 Cal.App.5th 528, 533, 286 Cal. Rptr. 3d 333, holds that just as a trial court lacks subject matter jurisdiction to enter judgment for conduct that does not violate a criminal or civil statute, a trial court also

lacks subject matter jurisdiction to enter judgment for allegedly tortious conduct, fashioned by common law, that the California Supreme Court has determined is not tortious. See Ch. 324, *Jurisdiction: Subject Matter*, § 324.84[14][a].

Subject Matter Jurisdiction—Waiver and Estoppel. *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.* (2020) 9 Cal. 5th 125, 140, 260 Cal. Rptr. 3d 442, holds that subject matter jurisdiction cannot be conferred by consent. See Ch. 324, *Jurisdiction: Subject Matter*, § 324.84[14][d].

CONTRACTS AND COMMERCIAL LAW

Banking—Electronic Fund Transfer Act. In *Widjaja v. JPMorgan Chase Bank, N.A.*, (9th Cir. 2021) 21 F. 4th 579, the court of appeals held that plaintiff met her pleading burden under 15 U.S.C. § 1693 et seq. (EFTA) by alleging that defendant bank knew of a security breach that enabled unauthorized withdrawals but took no action to protect the account from further withdrawals. See Ch. 95, *Banks, Deposits, and Checks*, §§ 95.340, 95.364[5].

CORPORATIONS

Derivative Actions—Limited Liability Companies. In *Schrage v. Schrage* (2021) 69 Cal. App. 5th 126, a case involving involuntary dissolution of an LLC, the court of appeal held that plaintiff lacked standing to bring an individual rather than a derivative action for breach of fiduciary

duty by defendants when the gravamen of the action was injury to the entity. See Ch. 168, *Corporations: Derivative Actions*, §§ 168.12, 168.44[1].

LLC Involuntary Dissolution—Statutory Buyout. In *Cheng v. Coastal L.B. Associates, LLC* (2021) 69 Cal. App. 5th 112, the court of appeal affirmed the trial court’s order confirming a majority appraisers’ award valuing the parties’ respective 25 percent interests in the LLC at a discounted fair market value, reflecting a minority interest discount. See Ch. 346, *Limited Liability Companies*, §§ 346.150[4], 346.83.

ELECTIONS

Campaign Funds Violations. Effective January 1, 2022, any person who uses campaign funds in a manner that violates the Political Reform Act of 1974 and results in an egregious personal benefit (as defined) is liable in an administrative or civil action for an amount of up to two times the amount of the unlawful expenditure. See Ch. 242, *Election Campaigns*, § 242.44[6].

Violations with Limited Public Harm. This release adds coverage of the Streamline Program established by the Fair Political Practices Commission for violations of the Political Reform Act of 1974 that cause limited public harm. See Ch. 242, *Election Campaigns*, § 242.72A.

Advertisement Disclosures in Languages Other than English. New regulatory requirements promulgated in 2021 govern political advertisement disclosures in lan-

guages other than English and in certain electronic or other specified formats. See Ch. 242, *Election Campaigns*, § 242.55B[12A].

Universal Distribution of Vote-By-Mail Ballots. Vote-by-mail ballots will be routinely sent by county election officials to all active registered voters in California for all elections, pursuant to 2021 legislation with a January 1, 2022, effective date. See Ch. 243, *Elections*, § 243.13[4].

California New Motor Voter Program Changes. The motor voter program was strengthened and streamlined in 2021 legislation to provide, for example, (1) that an application for a driver's license or identification card must include a voter registration application; and (2) new deadlines for the transmission of voter registration information from the Department of Motor Vehicles to the California Secretary of State. See Ch. 243, *Elections*, § 243.13[7][b].

Tax Returns of Gubernatorial Candidates. New legislation extended the deadline for candidates for Governor to submit tax returns, and revised the requirements governing redactions of personal information from the returns. See Ch. 243, *Elections*, § 243.33[3][e].

Universal Distribution of Vote-By-Mail Ballots. As of January 1, 2022, a vote-by-mail ballot will be mailed to every active registered voter for every election, a practice first used statewide on a temporary basis as a result of the COVID-19

pandemic. See Ch. 243, *Elections*, § 243.13[4].

Behested Payment Reporting. New behested payment reporting rules with a December 22, 2021, effective date (1) provide that the reports must include additional disclosures under certain circumstances, and may set forth good faith estimates; and (2) specify when the reporting requirements apply to charitable organization fundraising solicitations and to payments from donor advised funds. See Ch. 243, *Elections*, § 242.53C.

Racially Polarized Voting. *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal. App. 5th385 holds evidence of racially polarized voting in five of 10 past elections for city council was adequate to support a lower court's determination that the at-large system of elections for council seats violated the California Voting Rights Act. See Ch. 243, *Elections*, § 243.19.

EMPLOYMENT LAW

FEHA Limitation Periods and Tolling. Gov. Code § 12960 has been amended to extend deadlines for the filing of administrative complaints under the FEHA that allege violations of certain other discrimination statutes, e.g., Labor Code § 1197 (pay discrimination based on sex); and to add tolling provisions retroactively. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.51[1].

FEHA Class Actions. Gov. Code § 12961 has been amended to add requirements for the director of the

DFEH with respect to class actions under the FEHA. *See* Ch. 115, *Civil Rights: Employment Discrimination*, § 115.52[4].

FEHA Administrative and Judicial Procedure. Gov. Code § 12965 has been amended to include provisions governing venue, tolling for dispute resolution, and civil remedies. *See* Ch. 115, *Civil Rights: Employment Discrimination*, §§ 115.51, 115.52.

Disqualification from Obtaining Benefits. Unemp. Ins. Code § 1260, governing periods of ineligibility for persons disqualified from obtaining unemployment insurance benefits, has been amended, including new subsection (f), which sets forth departmental requirements prior to disqualification for submitting false representations in violation of Unemp. Ins. Code § 1257(a). *See* Ch. 564, *Unemployment and Disability Insurance*, § 564.131.

FAMILY LAW

Postadoption Contact Agreements. A court of appeals held that a trial court erred when it said it did not have the authority under Fam. Code § 8616.5 to amend final adoption orders to include a postadoption contact agreement that had not been properly presented to the adoption court for review and approval at the time the adoption petitions were granted. As a court of equity, it held, it could have used its equitable powers to amend the judgments to include the parties' agreement in the interests of fairness and justice [Adoption of S.S. (2021) 72 Cal. App. 5th 607, 614]. *See* Ch

12B, *Adoptions: Unmarried Minors* § 12B.18.

Inquiry into Indian Child Ancestry. A court of appeals has held that an agency has a duty of initial inquiry in addition to following the ICWA because state law "more broadly imposes on social services agencies and juvenile courts (but not parents) an affirmative and continuing duty to inquire" whether a child in the dependency proceeding is or may be an Indian child". Thus, it concluded, a court must reverse where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child [In re Benjamin M. (2021) 70 Cal. App. 5th 735, 740–743 *See* Ch 12B, *Adoptions: Unmarried Minors* § 12B.270.

Domestic Relations Exception to Subject Matter Diversity Jurisdiction. In 1992, the Supreme Court recognized a domestic relations exception to subject matter diversity jurisdiction in cases involving the issuance of a divorce, alimony, or child custody decree [*see* Ankenbrandt v. Richards, 504 U.S. 689, 704, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992)]. The Ninth Circuit held it that the Supreme Court's emphasis on the appropriateness on state court retention of jurisdiction in those types of domestic relations cases necessarily means the exception also applies to the modification of an existing divorce decree [Bailey v.

Macfarland (9th Cir. 2021) 5 F.4th 1092, 1095]. See Ch 220, *Dissolution of Marriage: Master Procedural Guide* § 220.20.

Hague Convention on International Child Abduction. The Ninth Circuit has recognized some guidelines for determining whether a grave risk of harm may be mitigated through an alternative remedy when returning a child abducted by a parent to their place of habitual residence. First, “the district court must consider the ‘effect of any possible remedies in light of circumstances as they exist in the present’ meaning ‘whether a grave risk of harm now exists, and if so, whether that risk can be minimized through an alternative remedy’.” Also, the Ninth Circuit noted, “the district court must not be influenced by or accord weight to any existing custody proceedings” [Radu v. Shon (9th Cir. 2021) 11 F.4th 1080, 1087 quoting *Gaudin v. Remis* (9th Cir. 2005), 415 F.3d 1028, 1036–1037]. See Ch 260, *Family Law Enforcement: Foreign Judgments* § 260.251.

Mutual Restraining Orders under DVPA. A court of appeals held that the trial court erred in issuing mutual restraining orders when it failed to consider the mandatory factors of Pen. Code § 836(c)(3). Specifically, it held that the trial court failed to consider the intent of the DVPA and other laws protecting victims of domestic violence from continuing abuse, whether either party made the threats to the other creating fear of physical injury, and the his-

tory of domestic violence between the couple [K.L. v. R.H. (2021) 70 Cal. App. 5th 965, 980, 285 Cal. Rptr. 3d 563]. See Ch. 293, *Harassment and Domestic Violence*, § 293.53.

INTELLECTUAL PROPERTY

De Minimis Doctrine; Copyright Infringement. The Ninth Circuit clarified the role that de minimis copying plays in statutory copyright. It recognized that it, and other circuits, apply the doctrine to answer the question whether the infringing work and the copyrighted work are substantially similar so as to make the copying actionable. In other words, the de minimis concept is properly used to analyze whether so little of a copyrighted work has been copied that the allegedly infringing work is not substantially similar and therefore not infringement. Thus, it concluded, once ownership and violation of one of the exclusive rights in copyright (infringement) under 17 U.S.C. § 106 has been established, de minimis use of the infringing work is not a defense to an infringement action [(Bell v. Wilmott Storage Servs., LLC (9th Cir. 2021) 12 F.4th 1065, 1074–1076 (*emphasis added*)). See Ch. 349 *Literary Property and Copyright*, § 349.27[6].

JUVENILE LAW

Dependency—Relative Placement. In 2021, SB 354 (Stats. 2021, ch. 687) provided significant changes to the law regarding relative placement. First, the new legislation amended Health Safety Code § 1522 to give county welfare agencies

broadener abilities to grant exemptions to previously non-exemptible crimes [Health Safety Code § 1522(g)(2)(A)(i),(ii), & (iv)]. This is particularly significant for relatives seeking placement, who can now seek exemptions for criminal convictions unless they have a felony conviction for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any other crimes against a child in the last five years [Health Safety Code § 1522(g)(2)(A)(iv)]. Additionally, the court is now authorized to place a child with a relative regardless of the status of the exemption, if the court finds that placement with the relative does not pose a risk to the health and safety of the child [Welf. & Inst. Code §§ 319(a)(h)(3), 361.2(e)(11), 361.4(b)(6)]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, §§ 328.32[8], 328.127[3].

Dependency—Referral From Guardianship Proceedings. Effective January 1, 2022, A.B. 260 amended Probate Code § 1513(c) and Welf. & Inst. Code §§ 329 and 331 in order to make guardianship laws and the juvenile court laws operate cohesively to ensure that all cases referred by the probate court for a child welfare investigation are subject to review by the juvenile court without limiting the probate court's ability to take action for the protection of the child while the child welfare investigation and juvenile court review are pending. The ultimate goal was to ensure the protection of every child's health, safety, and welfare and to provide due process to the child and

family [Probate Code § 1513(i); AB 260 (Stats. 2021, ch. 578, § 3)]. Probate Code § 1513 provides that upon the filing of a guardianship petition, an investigation into the petition and a report shall be done, unless waived by the court for good cause. The report must include a social history of the proposed guardian and the proposed ward including the needs of the child and the ability of the petitioner to meet those needs, a discussion of the relationship between the petitioner and the child and the child's wishes regarding the petition [Probate Code § 1513(a)(1)–(4)]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.36.

Dependency—Alternative to Filing Petition. If the social worker, after investigating a case, concludes that a child is or soon will be within the jurisdiction of the juvenile court, the social worker may, in lieu of filing a dependency petition, and with consent of the child's parent or guardian, undertake a program of supervision in an attempt to ameliorate the situation that brings the child within, or increases the probability that the child will soon be within, the court's jurisdiction [Welf. & Inst. Code § 301(a); Welf. & Inst. Code § 300, amended by AB 841 (Stats. 2021, ch. 98, § 1) (amended to add specific statement of intent that voluntary services are not limited to families who are in need of assistance but do not come within one of the Welf. & Inst. Code § 300 subdivisions)]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.37[1].

Dependency—Petition for Hearing and COVID-19. During the current COVID-19 State of Emergency, the statutory timelines for juvenile hearings have been supplanted by Cal. Rules of Court, Emergency Rule 6, which allows for the prioritization of certain hearings, including detention hearings, and continuances of up to sixty days. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.38[6].

Dependency—Restraining Orders. In 2021, Family Code § 6389 was explicitly made applicable to restraining orders issued by juvenile court’s pursuant to Welf. & Inst. Code § 213.5(a)–(d) [Welf. & Inst. Code § 213.5(g)(1), added by SB 320 (Stats. 2021, Ch. 685, § 14)]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.47[1].

Dependency—Dependents Who Are Parents Themselves. Dependents who are parents themselves also have the right to protect and raise their own children. Assembly Bill (AB) 670 (Stats. 2021, ch. 86) provides that when a report alleging abuse or neglect of the child of a minor dependent parent is received, the agency receiving that report is to notify the attorney who represents the minor parent or nonminor dependent (NMD) in dependency court within 36 hours or receiving the report [Welf. & Inst. Code § 11166.1(c)(1)]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.62[2].

Dependency—ICWA. In 2021, two new ICWA bills were signed into law. Assembly Bill (AB) 873 (Stats.

2021, ch. 284) was enacted to improve compliance with the Indian Child Welfare Act (ICWA) and remediate inequities in the child welfare system by bringing California law into compliance with the federal mandate requiring the State to negotiate Title IV-E agreements with Tribes. The second bill was AB 1055 (Stats. 2021, ch. 287) which ensures that students in foster care under the authority of a Tribal Court are afforded equitable access to statutory entitlements, including educational protections. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, §§ 328.62[2], 328.125.

Dependency—Family First Prevention Services Act. The Family First Prevention Services Act (FFPSA) was enacted in 2018 to ensure that if a child needed to be placed in foster care they were placed in the least restrictive, most family-like setting appropriate to their individual needs [42 U.S.C. §§ 472(k)(1)(B), 475(c); FFPSA, Pub. L. No. 115-123, 132 Stat. 254]. One part of FFPSA established that beginning October 1, 2021, STRTPs (Short Term Residential Therapeutic Programs) will have new requirements in order to be eligible for Title IV-E funding. FFPSA also changed the name of STRTPs to Qualified Residential Therapeutic Programs (QRTPs). California, however, has elected to continue to use the term STRTP. AB 153 was signed into law on July 16, 2021, to achieve full compliance with FFPSA [AB 153 (Stats. 2021, ch. 86)]. See Ch. 328, *Juvenile Courts: Dependency Pro-*

ceedings, § 328.127[11].

Dependency—Petition for Modification of Orders. There is a split of authority on the issue of whether a showing of best interest is required where the agency has failed to conduct adequate search efforts for a parent or to provide proper notice. The recent case of *In re R.A.*(2021) 61 Cal. App. 5th 826, 839, 275 Cal. Rptr. 3d 877 has in turn distinguished *Justice P.* based on the initial reasonable search efforts that occurred in *Justice P.* In contrast, *R.A.* involved the agency’s failure to make reasonable search efforts from the very start of the case, and the failure to show a thorough, systematic investigation of Father’s whereabouts at any point. Based on these facts, the *R.A.* Court held “[w]e cannot accept the idea that an agency may completely ignore its duty to search for a missing parent and then, should the missing parent show up, rely on the best interest of the child to preclude that parent from participating in the dependency case” [*In re R.A.*(2021) 61 Cal. App. 5th 826, 839, 275 Cal. Rptr. 3d 877]. Likewise, in *In Re Daniel F.* (2021) 64 Cal. App. 5th 701, 715–716, 279 Cal. Rptr. 3d 161, a best interest showing was not required where the Agency made little to no effort to give the father notice until it was poised to terminate parental rights. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.141[5].

Dependency—Permanency Planning Procedures. The beneficial relationship exception has, for many years, been described as a “two

prong” test which first asked whether the parent had maintained regular visitation and contact with the child. In 2021, the California Supreme Court revised the beneficial relationship exception by separating the second prong into two separate inquiries [*In re Caden C.* (2021) 11 Cal. 5th 614, 631, 278 Cal. Rptr. 3d 872, 486 P.3d 1096, citing *Seiser & Kumli, California Juvenile Courts Practice and Procedure* (2020) § 2.171[5][b][ii][A]–[B] (Matthew Bender)]. Consequently, in order to establish the beneficial relationship exception, the parent asserting it must show, by a *preponderance of the evidence*, three prongs. First, the parent must show that they have maintained regular visitation and contact with the child, taking into account the extent of visitation permitted. Secondly, the parent must show that the child has a substantial, positive, emotional attachment to the parent—the kind of attachment implying that the child would benefit from continuing the relationship. The third prong requires the parent to show that terminating that attachment would be detrimental to the child even when balanced against the countervailing benefit of a new, adoptive home [*In re Caden C.* (2021) 11 Cal. 5th 614, 632, 278 Cal. Rptr. 3d 872, 486 P.3d 1096, *Welf. & Inst. Code* § 366.26(c)(1)(B)]. When the parent has met that burden, the parental-benefit exception applies such that it would not be in the best interest of the child to terminate parental rights, and the court should select a permanent plan other than

adoption. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.171[5][b][ii].

Dependency—Financial Eligibility for Certain Nonminor Dependents. Prior to 2022, some nonminor dependents did not meet eligibility criteria for financial support under the Aid to Families with Dependent Children—Foster Care (AFDC-FC) program. That eligibility criteria is set forth in Welf. and Inst. Code section 11401. Effective January 1, 2022, however, a county child welfare, probation, or tribal placing agency, for certain nonminor dependents who were ineligible for federal financial assistance before turning 18 years of age, may file a petition under Welf. and Institutions Code section 388, subsection (f) to dismiss dependency jurisdiction and immediately resume dependency jurisdiction so that the nonminor dependent qualifies for federal financial participation [Welf. and Inst. Code sections 388(f); 11401 (Stats. 2021, ch. 622, §§ 1, 3 (AB 640))]. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.180[10].

Dependency—Appeals and Constructive Filing Doctrine. In 2021, the California Supreme Court reiterated the rule that the constructive filing doctrine does not apply to juvenile dependency cases [In re A.R. (2021) 11 Cal. 5th 234, 276 Cal. Rptr. 3d 761], but nonetheless allowed an out-of-custody parent to raise an ineffective assistance of counsel claim despite a late filing of the notice of appeal based on the

statutory right to competent representation [In re A.R. (2021) 11 Cal. 5th 234, 253–255, 276 Cal. Rptr. 3d 761]. The Supreme Court has also granted a petition for review, however, in the case of In re Christopher L. (2021) 56 Cal. App. 5th 1172, 271 Cal. Rptr. 3d 147, to decide if structural error exists where the juvenile court proceeds with the jurisdiction and disposition hearings without an incarcerated parent’s presence and without appointing counsel for that parent. This is an area to watch for further developments. See Ch. 328, *Juvenile Courts: Dependency Proceedings*, § 328.190[4].

Delinquency—Judicial Transfer. After several appellate cases challenged the constitutionality of Senate Bill 1391, in 2021 the California Supreme Court addressed the only case to have held SB 1391 unconstitutional as inconsistent with the stated purposes of Proposition 57. In O.G. v. Superior Court (O.G.) (2021) 11 Cal. 5th 82, 87, 275 Cal. Rptr. 3d 406, the Supreme Court held that SB 1391 was “fully consistent with and furthers Proposition 57’s fundamental purposes of promoting rehabilitation of youthful offenders and reducing the prison population.” Generally, the court will uphold as valid a legislative amendment as long as by any reasonable construction the court can find it complies with the initiative’s requirement that amendments further the purposes of the proposition [O.G., *supra*, 11 Cal. 5th at 91]. Here, the court found SB 1391 consistent with Proposition 57’s intention to further public safety, save

spending on prisons, prevent federal courts from releasing prisoners from overcrowded prisons, emphasize rehabilitation, and require a judge, not a prosecutor, to decide whether juveniles are tried in criminal court [O.G., *supra*, 11 Cal. 5th at 92–96]. See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.61[1].

Delinquency—Previous Delinquent History for Transfer. In evaluating the “previous delinquent history” criterion in Welf. & Inst. Code § 707(a)(3)(C), the court is not limited to considering conduct that resulted in delinquency petitions or conduct that precedes the offense(s) alleged in the transfer proceeding [D.C. v. Superior Court (2021) 71 Cal. App. 5th 441, 456–458, 2021 Cal. App. LEXIS 942]. See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.61[14][f][iii].

Delinquency—Resentencing in Criminal Court. To be resentenced, petitioner must prove by a preponderance of the evidence that at least one of the four mitigating circumstances in § 1170(d)(2)(A)–(D) is true [Pen. Code § 1170(d)(5)]. As it relates to circumstance § 1170(d)(2)(B), the court must consider only the felony juvenile crime adjudicated, and its elements, to determine whether it was a crime with “significant potential for personal harm to victims,” and an inquiry into other conduct related to the commission of the offense cannot be read into the language of the statute [People v. Harrington (2021) 69 Cal. Rptr. 5th 483, 498, 2021 Cal. App. LEXIS 798].

See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.62[2][b][ii].

Delinquency—Affirmative Defense of Human Trafficking. Penal Code § 236.23 provides an affirmative defense to a crime that is not a violent felony as described in Penal Code § 667.5(c), if the minor can prove by a preponderance of the evidence that he or she was “coerced to commit the crime as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm” [Penal Code § 236.23(a), (b)]. See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.77.

Delinquency—Foster Care Placement. Although infrequently utilized as a dispositional alternative for probation youth, the court may place a minor in foster care under certain limited circumstances. This placement cannot be made as a “punishment” for the purposes of juvenile court law [Welf. & Inst. Code § 202]. Historically, probation has used what has colloquially been referred to as “group homes” more frequently than foster homes and this kind of congregate care placement used for delinquent youth was not usually referred to as “foster care.” However, “foster care” means residential care in any of the settings described in §§ 11402 and 11402.01, which range from relative homes or foster homes to intensive therapeutic residential programs and out-of-state facilities [Welf. & Inst. Code § 727.4(d)(1)]. See Ch. 329, *Juvenile Courts: Delinquency*

Proceedings, § 329.96[3].

Delinquency—Commitment to Secure Youth Treatment Facility.

Due to the pending closure of the Division of Juvenile Justice, the Legislature authorized counties, beginning July 1, 2021, to create “secure youth treatment facilities” for those youth that previously could have been committed to DJJ. Thus, in addition to the types of dispositional treatment options specified in Welf. & Inst. Code § 727 and § 730, a court may now order a ward 14 years of age and older, to be committed to a secure youth treatment facility for a period of confinement. See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.96[6].

Delinquency—Maximum Term of Confinement. Effective May 14, 2021, a minor may not be held in physical confinement for a period that exceeds the middle term of imprisonment which could be imposed on an adult convicted of the same offense(s) [Welf. & Inst. Code § 726(d)(1)]. In § 726(d), as well as § 731, the “maximum term of imprisonment” means the middle of the three time periods spelled out in Penal Code § 1170(b), plus any enhancements if proven, without consideration of Penal Code § 1170(a) or good behavior credits pursuant to other Penal Code provisions applicable to adults [Welf. & Inst. Code § 726(d)(2)]. If the court chooses to aggregate the period of physical confinement, based upon multiple counts or multiple petitions, including previously sustained wardship petitions,

the “maximum term of imprisonment” is the aggregate term specified in Penal Code § 1170.1(a), which could include imposition of additional sentence enhancing terms [Welf. & Inst. Code § 726(d)(3)]. If the sustained offense is a misdemeanor or a felony not included within the provisions of Penal Code § 1170, the “maximum term of imprisonment” is the middle term [Welf. & Inst. Code § 726(d)(4)]. See Ch. 329, *Juvenile Courts: Delinquency Proceedings*, § 329.97[1].

PROBATE

Revocable Transfer on Death Deeds (“Revocable TOD Deeds”).

In 2022, the Legislature extended the term of the original 2015 statutes governing revocable TOD deeds until January 2, 2032, and made significant substantive changes to the TOD deed statutes. Among other things, the TOD Deed statutes now require that there be two subscribing witnesses to a TOD deed and that the beneficiary give and record a statutory notice of the transferor’s death. The legislation also clarified what types of interests may be transferred by a revocable TOD Deed, and what types of interests may not. The courts are authorized to construe TOD deeds to resolve ambiguities or errors in property description, and the general law governing construction of deeds is made applicable to revocable TOD deeds. The rules for determining what happens when multiple instruments attempt to dispose of the same property have been clarified and refined. Provisions governing the liability of the beneficiary under a

revocable TOD deed with respect to liens, encumbrances, and creditors of the estate have been clarified, and the recipient of property under a revocable TOD deed has the option to voluntarily return the property in question to the transferor's estate for administration. The Law Revision Commission is directed to study the effect and make recommendations regarding the continuation and effectiveness of California's revocable TOD law on or before January 1, 2031. For a more detailed summary of the current state of the revocable TOD statutes, see the Special Alert preceding Ch. 441, *Probate: Disposition Without Administration*.

Birth and Death Records—Change of Gender Identity. Legislation enacted in 2021 but not effective until January 1, 2023, has expanded and simplified the process for changes of birth and marriage records to reflect a change of gender identity. Areas addressed by the legislation include issuance of new birth certificates for minor and children of individuals who have effected a change in gender identity; and procedures for changing of a minor's gender and sex identifier. The Judicial Council has not yet issued forms incorporating the amended statutes, and that fact has been noted in appropriate locations in the forms in this chapter, as well as references to the new requirements. See Ch. 99, *Birth and Death, Establishing the Fact of*, §§ 99.13, 99.38

General—Emergency COVID-19 Rules/Remote Appear-

ances. This release updates the status of the emergency COVID-19 regulations and includes coverage of the new Code Civ. Proc. § 367.75 (repealed effective July 1, 2023), which codifies and expands the authorization for use of appearances via remote technology formerly covered in Emergency Rule 3 (which is now inapplicable in civil actions). Also included is coverage of Cal. Rules of Court, Rule 3.672, which implements Code Civ. Proc. § 367.75. See Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Procedures*, §§ 560.10A [1], [3], 560.89. Former rules governing telephone appearances also have been suspended.

General—Professional Fiduciaries: Licensing and Regulation. Licensing and regulation of professional fiduciaries under the Professional Fiduciaries Act has been revamped by 2021 legislation. Licensing qualifications have been changed, and the Bureau has authority to investigate actions of any professional fiduciary on receipt of a complaint from any person or a report from a court that has imposed a penalty, removed the fiduciary as a conservator, or determined that the fiduciary abused a conservatee. The Board is required to impose sanctions under specified circumstances. Fiduciaries also are required to post a schedule or range of fees on their internet websites, or if they do not have a website, to provide such information to prospective clients. See Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.66; see also Ch. 560C, *Trusts:*

Administration, Management, and Internal Affairs, 560C.14.

General—Uniform Partition of Heirs Property Act. The Uniform Partition of Heirs Property Act [Prob. Code § 874.311 et seq], which prescribes rules for the valuation, partition, and sale or buyout of fractional interests held by family members as tenants in common, was enacted in California in 2021. Although the Act is not expected to have a significant impact on trust practice, it may be useful in some cases as a bargaining chip to help negotiate a division of the property among the holders of fractional interests in estate property without instituting a formal partition action. Notes regarding this point have been added in Ch. 290A, *Guardianship and Conservatorship: Asset Management and Investment*, §§ 290A.13, 290A.42[2]; Ch. 456, *Probate: Management of Estate Assets*, § 456.28, and Ch. 458D, *Probate: Accounts, Final Distribution, and Compensation*, § 458D.90; for detailed discussion of the Act, see Ch. 397, *Partition*.

Elder Abuse—Protective Orders Against Isolating Elderly Persons. Under revisions to Welf. & Inst. Code § 15610.07 effective January 1, 2023, protective orders will be specifically available to restrain a party from abusing an elder or dependent adult by isolating the person [see Welf. & Inst. Code § 15610.07(b)(5)(E) (operative January 1, 2023); stats. 2021 ch. 264 § 3]. Since denial of access to an elderly person frequently is an issue in estate

litigation, especially in connection with financial abuse, undue influence, incapacity, and related claims, the availability of protective orders can be potentially important if another party is barring access to or contact with an elderly person. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, §§ 5.35, 5.42, 5.71[2].

Elder Abuse—Homelessness Can Constitute Neglect. “Neglect” for purposes of the elder abuse statutes may now include homelessness if the elder or dependent adult is unable to meet any of the basic needs specified in the statute [Welf. & Inst. Code § 15610.57(c)]. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.33[3].

Elder Abuse/Probate—Damage for Decedent’s Pain and Suffering Authorized. The legislature has amended Code Civ. Proc. § 377.34 to authorize recovery of damages for pain, suffering, or disfigurement in actions filed by a decedent’s personal representative or successor in interest between January 1, 2022 and January 1, 2026, or in which a preference was granted under Code Civ. Proc. § 36, which authorizes a trial preference for persons over age 70 and in ill health, before January 1, 2022 [Code Civ. Proc. § 377.34(b)]. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.37[1], 5.90[4][c]; see also Ch. 450, *Probate: Collecting Assets*, §§ 450.17[3], 450.60[3].

Elder Abuse/Conservatorships. Prob. Code § 2112(a) now provides that in addition to any other remedies available under statutory common

law, if a court finds that a conservator who is a professional fiduciary licensed by the Professional Fiduciaries Bureau has abused a conservatee (including financial abuse), the conservator is liable for up to \$10,000 for each separate act of abuse, or up to \$1,000 for each act if the conservator is not a licensed professional fiduciary. Any interested person may petition the court to investigate an allegation of elder abuse of a conservatee. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.37A; see also Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.65; Ch. 285, *Guardianship and Conservatorship: Care of Ward or Conservatee*, § 285.20; Ch. 290D, *Guardianship and Conservatorship: Actions Against Guardians, Conservators, and Sureties*, § 290D.12[6].

Guardianships—New Judicial Council Informational Form. In guardianship matters, notice must be accompanied by a copy of a statutory form prepared by the Judicial Council; containing information about the nature of guardianship of a minor and the rights, duties, and obligations of the person serving as a guardian. (The Judicial Council had not developed this form as of the date of publication of this release.) See Ch. 280, *Guardianship and Conservatorship: Appointment of Guardians*, § 280.62[1]; Ch. 284, *Guardianship and Conservatorship: Notice*, § 284.70[3].

Guardianships and Conservatorships—Referral of

Business to Affiliate. A guardian or conservator that is not a trust company is now prohibited from hiring or referring business to any entity in which the guardian or conservator has a financial interest. Limited exceptions are applicable to trust companies on court approval. See Ch. 287, *Guardianship and Conservatorship: General Management Powers*, § 287.13[4].

Guardianships and Conservatorships—Fees. A guardian or conservator may not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully defending a fee request petition, opposing a petition, or any other unsuccessful request or action [Prob. Code § 2640(d)(1)]. However, if the court determines, by clear and convincing evidence, that the defense, opposition, or other action was made in good faith, was based upon the best interest of the ward or conservatee, and did not harm the ward or conservatee, the court may reduce the compensation awarded for the costs or fees incurred instead of denying it completely. The court must state the reasons for its determination in writing or on the record. See Ch. 290F, *Guardianship and Conservatorship: Compensation of Guardian or Conservator*, § 290F.41[1].

Conservatorships—Periodic Review. The court investigator is now required to conduct an annual investigation of the conservatorship; provisions allowing the court to permit an investigation every two years have

been deleted. The periodic review must determine whether the conservatee wishes to have the conservatorship terminated, whether it is still necessary, and whether it remains the least restrictive alternative for the protection of the conservatee. See Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.65.

Guardianship and Conservatorship—Appointment of Attorney. The rules governing appointment of attorneys for conservatees and proposed conservatees have been amended to provide that if the conservatee or proposed conservatee has expressed a preference for a particular attorney, the court must appoint that attorney even if the attorney is not on the court's list of court-appointed attorneys. An attorney so appointed must provide zealous representation, unless the attorney cannot do so or has a conflict of interest. See Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.32[5]; see also Ch. 280, *Guardianship and Conservatorship: Appointment of Guardians*, § 280.118[6].

Conservatorships—Role of Conservator's Counsel. Prob. Code § 1471(e) has been amended to provide that the role of legal counsel of a conservatee, proposed conservatee, or person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of the client, consistent with professional and ethical obligations and the California Rules of Professional Con-

duct. Thus, the attorney is an advocate for the client, not an agent of the court. See Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.32[5].

Conservatorship—Investigation. Prob. Code § 1826 has been amended to clarify and expand the duties of the court investigator in conservatorship matters, including a review of relevant medical reports from the proposed conservatee's primary care physician and other relevant mental and physical health care providers. See Ch. 281, *Guardianship and Conservatorship: Appointment of Conservators*, § 281.37.

Temporary Conservators—Nonemergency Changes of Conservatee's Residence. A request for nonemergency change of a temporary conservatee of the person's residence must specify in detail the place to which the temporary conservator proposes to move the conservatee, the precise reasons that the petitioner or temporary conservator has concluded that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm. Contents of the required court investigation also have been modified. See Ch. 282, *Guardianship and Conservatorship: Temporary Guardians and Conservators*, § 282.32[1][a], [d].

Limited Conservatorships—Termination. Changes to the rules governing termination of limited conservatorships have been incorporated

into Ch. 290H, *Guardianship and Conservatorship: Termination of Guardianships and Conservatorships*, § 290H.12.

Conservatorships—

Termination. Amendments to Prob. Code § 1863(b) provide that the conservatee must be produced at a termination hearing unless the conservatee is out of state, unable to attend by reason of medical disability, or the court investigator has reported that the conservatee is unwilling to attend, does not wish to contest the conservatorship, and does not object to the current conservator, and the court orders that the conservatee need not attend. See Ch. 290H, *Guardianship and Conservatorship: Termination of Guardianships and Conservatorships*, § 290H.13.

Revocable Trusts—Duty to Account and Report / Power to Revoke. Prob. Code § 15800 has been amended to provide that if a trust is revocable but no person holding a power to revoke the trust is competent, the trustee's duties to account and report are then owed to each qualifying beneficiary. The new provisions also impose an affirmative duty on trustees to provide notice of the incompetence and a copy of the trust instrument to each beneficiary to whom the trustee would be required or authorized to distribute income or principal if the settlor had died as of the date of receipt of the information regarding incompetence. See Ch. 560D, *Trusts: Accounts*, §§ 560D.19, 560D.14[1]; see also Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and*

General Court Procedures, § 560.51[5], Ch. 560C, *Trusts: Administration, Management, and Internal Affairs*, § 560C.20[4]. Conforming changes have been made throughout the publication.

Recent Judicial Decisions

Accounts

Generally—

Misrepresentations of Material Fact in Account Are Treated as Extrinsic Fraud. In *Hudson v. Foster* (2021) 68 Cal. App. 5th 640, 648, 238 Cal. Rptr. 3d 822, the court held that misrepresentations of material fact in a conservator's account are treated as extrinsic fraud, and that in order to set aside an order approving a conservator's account on ground of extrinsic fraud, a conservatee is not required to establish that misrepresentations of material fact in the account could not have been discovered prior to entry of order approving the account. See Ch. 290D, *Guardianship and Conservatorship: Actions Against Guardians, Conservators, and Sureties*, § 290D.42[1]; Ch. 290E, *Guardianship and Conservatorship: Accounts*, § 290E.55; see also Ch. 285, *Guardianship and Conservatorship: Care of Ward or Conservatee*, § 285.20[5]; Ch. 458D, *Probate: Accounts, Final Distribution, and Compensation*, § 458D.47.

Elder Abuse—Standing. In *Ring v. Harmon* (2021) 72 Cal. App. 5th 844, 852, 287 Cal. Rptr. 3d 655, the court held that an elder who was both personal representative and a beneficiary of her deceased daughter's estate had standing to assert in her individual capacity, but not in her

capacity as personal representative, her claim that respondents were liable for financial elder abuse accomplished by means of a loan transaction with the estate. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, §§ 5.44[5], 5.45[2].

Guardianship—Special Immigrant Juvenile Findings. In *In re Scarlett V.* (2021) 72 Cal. App. 5th 495, 502, 287 Cal. Rptr. 3d 370, the court held that when a party meets the applicable burden of proof (preponderance of the evidence) under Evid. Code §§ 115, the court *must* make the requested findings; the determination is not discretionary. See Ch. 280, *Guardianship and Conservatorship: Appointment of Guardians*, § 280.120[7].

LPS Conservatorships—Waiver of Jury Trial. In *Conservatorship of C.O.* (2021) 71 Cal. App. 5th 894, 911, 286 Cal. Rptr. 3d 710, the court held that absent circumstances suggesting that the proposed conservatee’s counsel lacked actual authority, that counsel disregarded client’s wishes, or that the proposed conservatee was actually unaware of the right to a jury trial, counsel, on the proposed conservatee’s behalf, may waive the proposed conservatee’s right to have establishment or reestablishment of a conservatorship decided by jury trial. In so ruling, the court disagreed with *Conservatorship of Heather W.* (2016) 245 Cal. App. 4th 378, 381, 199 Cal. Rptr. 3d 689, which held that absent the conservatee’s personal waiver of a jury trial, the court must accord the conservatee

a jury trial unless court finds that the conservatee lacks capacity to make such a decision. See Ch. 361A, *Mental Health and Mental Disabilities: Judicial Commitment, Health Services and Civil Rights*, § 361A.42[2], [3].

Anti-SLAPP Motions. In *Dae v. Traver* (2021) 69 Cal. App. 5th 447, 455, 284 Cal. Rptr. 3d 495 (decided under pre-2010 no-contest law), the court dismissed an anti-SLAPP motion in an action seeking to show that a party violated a trust’s no contest clause by bringing an underlying suit for breach of fiduciary duty. The court rules that the plaintiff had shown at least “minimal merit” sufficient to defeat the anti-SLAPP motion by providing evidence that the underlying challenge would implicate the trust’s no contest clause by impairing the administration of the trust. Discussion of anti-SLAPP motions has been revised and expanded to clarify application of the anti-SLAPP analysis in the context of estate practice. See Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Procedures*, §§ 560.96A; for further reference to *Dae v. Traver*, see Ch. 560A, *Trusts: Creation, Validity, and Trust Contests*, §§ 560A.71, 560A.75.

Property—Community Property Presumption. In *Estate of Wall* (2021) 68 Cal. App. 5th 168, 175, 283 Cal. Rptr. 3d 246, the court interpreted *In re Brace* (2020) 9 Cal. 5th 903, 935, 266 Cal. Rptr. 3d 298, 470 P. 3d 15, which held that the Fam Code § 760 presumption prevailed

over Evid Code § 662 in dispute between a married couple and a bankruptcy trustee, as not altering the “well-established default rule” that form of title controls at death. See Ch. 560B, *Trusts: Property Disputes*, § 560B.61.

Hearings—Waiver of Claim. In *Conservatorship of Farrant* (2021) 67 Cal. App. 5th 370, 377, 282 Cal. Rptr. 3d 173, the appellate court ruled that failure to object to the probate court’s improper consideration of affidavits and declarations in a contested proceeding waived the issue on appeal. See Ch. 560B, *Trusts: Property Disputes*, § 560B.171.

PRODUCTS LIABILITY

U.S. Supreme Court Upholds Jurisdiction over Out-of-State Auto Maker in Consolidated Cases. A Montana resident was killed and a Minnesota resident was injured in motor vehicle accidents in their respective states. The manufacturer—Ford Motor Co.—admitted that it purposefully availed itself of the privilege of conducting business in both states. Writing for the majority, Justice Kagan concluded that the automaker was subject to jurisdiction in both states. In doing so, the justice rejected the “causal link” requirement for jurisdiction imposed by several federal circuits. The majority also distinguished the Court’s two prior cases—*Bristol-Meyers Squibb Co.* and *Walden v. Fiore*—in which out-of-state defendants were determined to be not subject to jurisdiction. *Ford Motor Co. v. Montana*

Eighth Judicial District Court (2021) ___U.S.___, 141 S. Ct. 1017, 209 L. Ed. 2d 225. See Ch. 460, *Products Liability*, § 460.104[28.1].

Another Court Expands Amazon.com’s Potential Exposure to Strict Liability. In 2020, California’s fourth appellate district court previously ruled that Amazon.com was subject to liability for a defective product sold through its “fulfilled by Amazon” (FBA) program. *Bolger v. Amazon.com, LLC* (2020) 53 Cal. App. 5th 431, 267 Cal. Rptr. 3d 601. Here, the second appellate district held that Amazon.com could be held strictly liable for a product (a hoverboard) sold by a third-party seller who did not use the FBA service. Amazon’s own business practices made it a direct link in the vertical chain of distribution. *Loomis v. Amazon.com LLC* (2021) 63 Cal. App. 5th 466, 277 Cal. Rptr. 3d 769. See Ch. 460, *Products Liability*, § 460.11[1][b]; § 460.11[5]; § 460.104[6][g.1].

Couple’s Remitted \$87 Million Award in Roundup Cases Withstands Appellate Review. A husband and wife both developed non-Hodgkin’s lymphoma after using the herbicide Roundup for decades. Their remitted awards were \$31 million and \$56 million, including \$25 million and \$45 million in punitive damages. The court of appeal affirmed, first finding that the claims were not preempted by FIFRA. The trial court properly instructed the jury on the consumer expectations test for the design defect claims. Substantial

evidence supported the jury's findings on both the failure-to-warn and design defect claims. The trial court did not improperly reduce the compensatory damages awards based on the plaintiffs' ages. Finally, the punitive damages awards were supported by the evidence, and the 4 – 1 ratio of punitive to compensatory damages complied with due process. *Pilliod v. Monsanto Co.* (2021) 67 Cal. App. 5th 591, 282 Cal. Rptr. 3d 679. See Ch. 460, *Products Liability*, § 460.11[9][c][i]; § 460.11[9][c][ii][A], [B], [D], [E]; § 460.11[10][a][ii]; § 460.33[2][a][i], [ii]; § 460.33[2][d][i]; § 460.52[2][g]; § 460.104[15][a], [b]; § 460.104[16][a]–[c]; § 460.104[39].

Patient with Metal-on-Metal Implant Seeks Recovery from Manufacturer—Court of Appeals Upholds Summary Judgment in Defense's Favor. A man received a metal-on-metal hip resurfacing implant. He sued the manufacturer after blood tests revealed elevated levels of cobalt and chromium. The trial court properly granted summary judgment in the manufacturer's favor. The learned intermediary doctrine barred the failure-to-warn claim because the surgeon knew about the metal ion issue from reading scientific studies. An FDA inspection report criticizing the manufacturer's quality control process was not evidence of a manufacturing defect. *Gall v. Smith & Nephew, Inc.* (2021) 71 Cal. App. 5th 117, 286 Cal. Rptr. 3d 108. See Ch. 460, *Products Liability*, § 460.11[9][b]; § 460.11[10][b][ii];

§ 460.104[16][d]; § 460.104[40].

PUBLIC ADMINISTRATIVE LAW

Due Process—Quasi-Legislative Actions. In *Save Lafayette Trees v. East Bay Regional Park District* (2021) 66 Cal. App. 5th 21, 55–56, 280 Cal. Rptr. 3d 679, the Court of Appeal held that due process of law requirements under the 14th amendment to the US Constitution and the California Constitution [Cal. Const. Art. 1, Section 7] of notice and an opportunity to be heard did not apply to the quasi- legislative actions of the East Bay Regional Park district in holding a public hearing, issuing a resolution and entering into a memorandum of understanding with a local utility (PG&E) to remove 245 trees from park district land. See Ch. 470A, *Due Process Restrictions on Public Agencies*, § 470A.12[2].

Public Records—Exemptions. In *Board of Registered Nursing v. Superior Court of Orange County* (2021) 59 Cal. App. 5th 1011, 1040–1041, 273 Cal. Rptr. 3d 889, one California court of appeal held that complete investigative files and administrative records related to disciplinary proceedings brought by several California state agencies, including the Medical Board of California, the Board of Registered Nursing, the California State Board of Pharmacy, and the California Department of Justice were protected from discovery in opioid related civil litigation by the official information privilege and the deliberative process privilege codified in Evidence Code Section 1040.

The California state agencies were not parties to the lawsuit. The court of Appeal held that it was necessary to maintain the confidentiality of this information and that outweighed the need for disclosure of this information. See Ch. 470C, *Public Records*, § 470C.13[14].

Public Records—Exemptions. In *Voice of San Diego v. Superior Court of San Diego County* (2021) 66 Cal. App. 5th 669, 691–692, 280 Cal. Rptr. 3d 906, the Court of Appeal held that the County of San Diego was justified in refusing to release to media sources unredacted information that showed the location and the location address of each confirmed COVID 19 outbreak in the county. See Ch. 470C, *Public Records*, § 470C.13[61].

Public Records—Peace Officer Personnel Records. In *Collondrez v. City of Rio Vista* (2021) 61 Cal. App. 5th 1039, 1054–1055, 275 Cal. Rptr. 3d 895, the Court of Appeal held that disclosure of personnel information related to a former police officer’s falsification of an accident report was required under Penal Code §§ 832.7(b)(1)(c), and § 832.8 because this was a sustained finding by the city manager following an investigation related to the report and the former officer had an opportunity to appeal the finding before a neutral arbitrator. See Ch. 470C, *Public Records*, § 470C.14[9].

Public Records—Judicial Enforcement. In *Austin v. City of Burbank* (2021) 67 Cal. App. 5th 654, 655–656, 282 Cal. Rptr. 3d 519, the

Court of Appeal held that a plaintiff’s appeal of the trial court’s denial of a writ of mandate sought by plaintiff against the city of Burbank was untimely under Gov. Code § 6259(c) because plaintiff failed to petition for issuance of an extraordinary writ which was required and plaintiffs’ appeal of the trial court order was filed one day too late based upon the 20 day filing deadline for petitioning for issuance of an extraordinary writ under Gov. Code Section 6259(c). See Ch. 470C, *Public Records*, § 470C.17.

Public Agency Rules—Interpretations. In *Valley Baptist Church v. City of San Rafael* (2021) 61 Cal. App. 5th 401, 406, 275 Cal. Rptr. 3d 629, one Court of Appeal gave significant weight to interpretations of the State Board of Equalization in holding that the religious exemption authorized by the California Constitution [Cal. Const., Art. 13, § 3(f)] applies only to ad valorem property taxation and does not apply to exempt a church from non ad valorem special property taxes, including the City of San Rafael’s Paramedic Services Special Tax, []. See Ch. 472, *Public Agency Rules*, § 472.13[3][c].

Public Agency Rules—Interpretations. In *McHugh v. Protective Life Insurance Company* (2021) 12 Cal. 5th 213, 220–221, 283 Cal. Rptr. 3d 323, 494 P. 3d 24, the California Supreme Court held that provisions of the California Insurance Code [Ins. Code §§ 10113.71, and 10113.72] that required a 60 day

grace period before an insurer could terminate a life insurance policy for nonpayment of premiums applied to life insurance policies that predated the adoption of these statutes. In so holding, the Supreme Court gave no deference to Department of Insurance staff correspondence nor to electronic instruction of that agency because neither of these items represent the agencies' official interpretations of these statutes and these items do not reflect the agency's carefully considered, long standing, and consistent. See Ch. 472, *Public Agency Rules*, § 472.13[3][c].

Public Agency Rules—Statutory Ban. In *Vasquez v. Department of Pesticide Regulation* (2021) 68 Cal. App. 5th 672, 676–677, 283 Cal. Rptr. 3d 659, one California Court of Appeal held that the Department of Pesticide Regulations township cap program which sets limits on the amount of pesticides including 1,3-Dichloropropene, that may be used each year to reduce cancer risks to bystanders living and working near areas where this pesticide is used is an invalid underground regulation that cannot be enforced. See Ch. 472, *Public Agency Rules*, § 472.20[1].

Public Agency Rulemaking—Writ of Mandate. In *California Manufacturers & Technology Association v. State Water Resources Control Board* (2021) 64 Cal. App. 5th 266, 271, 278 Cal. Rptr. 3d 668, the Court of Appeal affirmed the denial of a petition for a writ of ordinary mandate [Code Civ. Proc. § 1085] that challenged the validity

of a regulation setting the maximum contaminant level for trichloropropane (TCP), a carcinogen, in drinking water. The regulation was adopted by the State Water Resources Control Board based on the California Safe Drinking Water Act. The court rejected the challengers' argument that economic feasibility had to be considered, and also rejected the argument that the Board failed to comply with the economic impact requirement of the California Administrative Procedures Act. See Ch. 472B, *Review of Agency Rulemaking*, § 472.20[13].

Public Agency Adjudication—Precedent Decision. In *Skidgel v. California Unemployment Insurance Appeals Board* (2021) 12 Cal. 5th 1, 8–9, 282 Cal. Rptr. 3d 639, 493 P. 3d 196, the California Supreme Court affirmed the validity of a California Unemployment Insurance Appeals Board precedent decision that excluded from unemployment coverage an In-Home Supportive Services (IHSS) provider that provided services to a close family member recipient. The court held that Unemployment Insurance Code Sections 631 and 683 exclude providers who are the recipient's minor child, parent, or spouse. The precedent decision reached the same conclusion. See Ch. 473, *Public Agency Adjudication*, § 473.27.

Public Agency Adjudication—License Revocation or Suspension. In *Davis v. Physician Assistant Board* (2021) 66 Cal. App. 5th 227, 231–233, 281 Cal. Rptr. 3d 207, the

Court of Appeal affirmed the denial of a petition for a writ of administrative mandate under Code Civ. Proc. Section 1094.5 by the Superior Court. The writ was sought by a physician's assistant whose license was revoked by the Physician Assistant Board based on unlicensed practice or medicine, gross negligence, false and misleading advertising, repeated negligent acts, acts of dishonesty, and unprofessional conduct. The court of appeal held that there was sufficient evidence to support findings of the Administrative law judge as to every charge brought in support of the license revocation actions by the Board. See Ch. 473, *Public Agency Adjudication*, § 473.35[2].

Public Agency Adjudication—Civil Penalties. In *Lent v. California Coastal Commission* (2021) 62 Cal. App. 5th 812, 826, 277 Cal. Rptr. 3d 106, the Court of Appeal upheld the enforceability of a \$ 4,185,000 penalty imposed by the California coastal commission against landowners that built a deck, staircase and gate on the landowners property that blocked a public beach access easement. See Ch. 473, *Public Agency Adjudication*, § 473.35[8].

Agency Adjudication Decisions—Attorney's Fees. In *State Farm General Insurance Company v. Lara* (2021) 71 Cal. App. 5th 197, 203–204, 286 Cal. Rptr. 3d 124, the Court of Appeal affirmed an award of attorneys' fees in favor of a nonprofit intervener, Consumer Watchdog, and against an insurer,

State Farm General Insurance Company, under Ins. Code § 1861.10(b), which authorizes attorneys' fee (reasonable advocacy fees) to a consumer representative that makes a substantial contribution to the adoption of an order. See Ch. 473G, *Agency Adjudication Decisions*, § 473G.35[9].

Judicial Review—Ministerial Actions. In *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal. App. 5th 277, 286, 277 Cal. Rptr. 3d 649, the Court of Appeal reversed the denial of a petition for a writ of mandate by the trial court when a development company challenged the denial by a city of the companies' application for ministerial approval of a mixed use development for an affordable housing project. The Court of Appeal held that the trial court improperly applied a deferential standard of review. See Ch. 474, *Availability of Judicial Review of Agency Decisions*, § 474.11[3][b].

Judicial Review—Ministerial Actions. In *Nowicki v. Contra Costa County Employees Retirement Association* (2021) 67 Cal. App. 5th 736, 740–741, 282 Cal. Rptr. 3d 500, the Court of Appeal reversed the denial of a petition for a writ of mandate by the trial court when a fire chief sued a county employees retirement association claiming that the association abused its discretion when it determined that the fire chief had engaged in improper pension spiking and as a result reduced the fire chiefs retirement benefits retroactively. In reversing, the court of appeal held that the association board's decision to re-

duce the fire chief's retirement benefits was an abuse of discretion because the fire chief did not cause his retirement benefits to be improperly increased. See Ch. 474, *Availability of Judicial Review of Agency Decisions*, § 474.11[3][b].

Standards of Judicial Review—Private Hospital Boards. In *Natarajan v. Dignity Heath* (2021) 11 Cal. 5th 1095, 1101–1102, 492 P. 3d 294, 282 Cal. Rptr. 3d 1, the California Supreme Court held that the possibility of future employment with a hospital did not automatically disqualify a peer review hearing officer based on a financial conflict nor was the appearance of bias a proper basis for disqualification of a peer review hearing officer for financial conflict but the prospect of future employment of a peer review hearing officer with a hospital did not create a disqualifying risk of actual bias in the facts of this case. In so holding, the Court affirmed the denial of a petition for a writ of administrative mandate requested by a hospitalist to overturn revocation of his staff privileges at a private hospital. See Ch. 474, *Standards in Reviewing Agency Decisions*, § 474B.16[5][d].

TORTS

Failure to Inquire into License Status Can Support Negligent Entrustment of Vehicle to Unlicensed Driver. In *McKenna v. Beesley* (2021) 67 Cal. App. 5th 552, the court of appeal held that the failure to inquire into the driver's license status of an unlicensed driver could support a jury finding in a negligent entrust-

ment case that the owner should have known that the prospective driver was incompetent or unfit to drive the vehicle. See Ch. 82, *Automobiles: Causes of Action*, §§ 82.11[2], 82.12[1].

Arrest Pursuant to Void Local Ordinance Not Supported by Probable Cause. In *Carcamo v. Los Angeles County Sheriff's Dept.* (2021) 68 Cal. App. 5th 608, the court of appeal held that a warrantless arrest is not supported by probable cause when made pursuant to a local ordinance the type of which has been declared preempted by state law by the California Supreme Court. See Ch. 257, *False Imprisonment*, § 257.20[2].

Employer May be Liable for Fire Suppression Costs Under Respondeat Superior. In *Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal. 5th 493, the California Supreme Court held that Health & Safety Code §§ 13009 and 13009.1 incorporate the common law theory of respondeat superior, thus permitting an employer to be held liable for fire suppression costs when the fire was created through the misconduct of an employee acting within the scope of employment. See Ch. 267, *Fires*, § 267.18[1].

Cause of Action for Sexual Battery Expanded. Pursuant to an amendment of Civ. Code § 1708.5, the civil statute providing a cause of action for sexual battery has been expanded to generally include sexual contact after a condom has been re-

moved without verbal consent. See Ch. 58, *Assault and Battery*, § 58.27[1].

TRIAL

New Trial Required When Special Verdict Responses Inconsistent. In *Missakian v. Amusement Industry, Inc.* (2021) 69 Cal. App. 5th 630, 660, 285 Cal. Rptr. 3d 23, the court of appeal held that a trial court's obligation to reconcile opposing findings in order to preserve a jury's verdict applies only to inconsistencies between general and special verdicts and inconsistencies between special findings rendered in support of general verdict, not when

two special verdict responses are inconsistent. See Ch. 326A, *Jury Verdicts*, § 326A.17[7].

Experimental Evidence Admissible. In *People v. Johnson* (2022) 12 Cal. 5th 544, 623, 2022 Cal. LEXIS 2, the California Supreme Court held that experimental evidence is admissible in a trial if: (1) the experiment is relevant; (2) the experiment is conducted under substantially similar conditions as those of the actual occurrence; and (3) the evidence of the experiment will not consume undue time, confuse the issues, or mislead the jury. See Ch. 551, *Trial*, § 551.66[9].

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Publication 181 Release 242

May 2022

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 - Package 2 contains White Revision pages for Volumes 28, 30–32, 34–36, 38
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VOLUME 1

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	3-33	3-33
<input type="checkbox"/>	3-44.1 thru 3-44.3	3-44.1 thru 3-44.3
<input type="checkbox"/>	5-1 thru 5-6.1	5-1 thru 5-6.1
<input type="checkbox"/>	5-21 thru 5-62.5	5-21 thru 5-62.9
<input type="checkbox"/>	5-82.5	5-82.5 thru 5-82.7
<input type="checkbox"/>	5-131 thru 5-135	5-131 thru 5-135
<input type="checkbox"/>	9-10.1 thru 9-11.	9-11 thru 9-12.1

VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	12-23 thru 12-24.1	12-23 thru 12-24.1
<input type="checkbox"/>	12A-14.1 thru 12A-15	12A-15 thru 12A-16.1
<input type="checkbox"/>	12B-8.1 thru 12B-9	12B-9 thru 12B-10.1
<input type="checkbox"/>	12B-31 thru 12B-38.1	12B-31 thru 12B-38.1
<input type="checkbox"/>	12B-77 thru 12B-78.1	12B-77 thru 12B-78.1
<input type="checkbox"/>	12B-115 thru 12B-124.1	12B-115 thru 12B-124.3
<input type="checkbox"/>	12B-144.3 thru 12B-144.7	12B-144.3 thru 12B-144.7
<input type="checkbox"/>	16-87 thru 16-88.1	16-87

VOLUME 6

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	56-12.1 thru 56-13	56-13 thru 56-14.1
<input type="checkbox"/>	57-1	57-1 thru 57-2.1
<input type="checkbox"/>	57-15.	57-15 thru 57-16.1
<input type="checkbox"/>	57-59 thru 57-61	57-59 thru 57-61
<input type="checkbox"/>	58-42.1 thru 58-48.1.	58-43 thru 58-48.1

VOLUME 7

Revision

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	72-13.	72-13 thru 72-14.1
<input type="checkbox"/>	72-213 thru 72-217	72-213 thru 72-217
<input type="checkbox"/>	72-235	72-235 thru 72-236.1
<input type="checkbox"/>	72-265 thru 72-266.1	72-265 thru 72-266.1
<input type="checkbox"/>	72-309	72-309
<input type="checkbox"/>	72-321 thru 72-322.1	72-321 thru 72-322.1
<input type="checkbox"/>	72-381 thru 72-382.1	72-381 thru 72-382.1
<input type="checkbox"/>	72-429 thru 72-430.1	72-429
<input type="checkbox"/>	72-475 thru 72-487	72-475 thru 72-488.1

VOLUME 8

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	82-35 thru 82-40.1	82-35 thru 82-40.1
<input type="checkbox"/>	82-57 thru 82-65	82-57 thru 82-65
<input type="checkbox"/>	82-75 thru 82-77	82-75 thru 82-77

VOLUME 9

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	95-17.	95-17
<input type="checkbox"/>	95-148.1 thru 95-150.1	95-149 thru 95-150.1
<input type="checkbox"/>	95-220.1 thru 95-221	95-221 thru 95-222.1
<input type="checkbox"/>	99-1 thru 99-14.5	99-1 thru 99-14.11
<input type="checkbox"/>	99-23 thru 99-35	99-23 thru 99-35
<input type="checkbox"/>	100-27	100-27 thru 100-28.1

VOLUME 10

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	104-93 thru 104-95	104-93 thru 104-96.1
<input type="checkbox"/>	104-105 thru 104-129	104-105 thru 104-130.1
<input type="checkbox"/>	106-19	106-19

VOLUME 11

Revision

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	115-6.1 thru 115-9.	115-7 thru 115-10.1
<input type="checkbox"/>	115-68.1 thru 115-70.1.	115-69 thru 115-70.1
<input type="checkbox"/>	115-97	115-97 thru 115-98.1
<input type="checkbox"/>	115-144.1 thru 115-160.7	115-145 thru 115-160.11
<input type="checkbox"/>	115-177 thru 115-184.4(1)	115-177 thru 115-184.4(1)
<input type="checkbox"/>	115-190.8(7) thru 115-194.1	115-191 thru 115-194.9
<input type="checkbox"/>	118-17	118-17 thru 118-18.1
<input type="checkbox"/>	118-45	118-45 thru 118-46.1
<input type="checkbox"/>	118-69	118-69 thru 118-70.1
<input type="checkbox"/>	118-97 thru 118-98.1	118-97 thru 118-98.2(1)

VOLUME 12

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	124-35 thru 124-46.1	124-35 thru 124-46.3
<input type="checkbox"/>	124-71 thru 124-72.1	124-71 thru 124-72.1

VOLUME 14

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	168-8.1 thru 168-9	168-9 thru 168-10.1
<input type="checkbox"/>	168-20.1	168-20.1

VOLUME 15

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	No Material removed	184SA-1 thru 184SA-9 (file preceding 184-1)

VOLUME 17

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	214-11 thru 214-28.1	214-11 thru 214-28.1
<input type="checkbox"/>	214-41 thru 214-45	214-41 thru 214-45

VOLUME 18

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Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	220-15	220-15 thru 220-16.1
<input type="checkbox"/>	221-95 thru 221-99	221-95 thru 221-100.1

VOLUME 19

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	223-15	223-15 thru 223-16.1
<input type="checkbox"/>	223-25 thru 223-28.1	223-25 thru 223-28.1
<input type="checkbox"/>	224-95 thru 224-98.1	224-95 thru 224-98.1
<input type="checkbox"/>	224-115 thru 224-117	224-115 thru 224-117

VOLUME 20

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	242-3 thru 242-8.1	242-3 thru 242-8.1
<input type="checkbox"/>	242-19 thru 242-71	242-19 thru 242-72.9
<input type="checkbox"/>	242-86.13 thru 242-86.15	242-86.13
<input type="checkbox"/>	243SA-1 thru 243SA-5	Material not replaced
<input type="checkbox"/>	243-1.	243-1 thru 243-2.1
<input type="checkbox"/>	243-23 thru 243-41	243-23 thru 243-42.1
<input type="checkbox"/>	243-55 thru 243-58.1	243-55 thru 243-58.1
<input type="checkbox"/>	243-68.3 thru 243-68.5	243-68.3 thru 243-68.5
<input type="checkbox"/>	247-33 thru 247-34.1	247-33
<input type="checkbox"/>	247-69 thru 247-70.1	247-69 thru 247-70.1
<input type="checkbox"/>	247-225 thru 247-227	247-225 thru 247-227

VOLUME 21

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	249-99 thru 249-100.1	249-99 thru 249-100.1
<input type="checkbox"/>	250-3.	250-3 thru 250-4.1
<input type="checkbox"/>	250-72.15 thru 250-72.27	250-72.15 thru 250-72.27
<input type="checkbox"/>	250-88.27 thru 250-88.28(1)	250-88.27 thru 250-88.28(1)
<input type="checkbox"/>	252-21 thru 252-26.1	252-21 thru 252-26.1

VOLUME 22

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
Revision		
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	257-23	257-23 thru 257-24.1
<input type="checkbox"/>	259-16.1 thru 259-17	259-17
<input type="checkbox"/>	259-27	259-27 thru 259-28.1
<input type="checkbox"/>	259-95	259-95 thru 259-96.1
<input type="checkbox"/>	259-105 thru 259-107	259-105 thru 259-107
<input type="checkbox"/>	259-315 thru 259-319	259-315
<input type="checkbox"/>	260-83 thru 260-87	260-83 thru 260-88.1
<input type="checkbox"/>	267-21 thru 267-33	267-21 thru 267-33

VOLUME 24

Revision		
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	280-13 thru 280-34.1	280-13 thru 280-34.5
<input type="checkbox"/>	280-49 thru 280-59	280-49 thru 280-59
<input type="checkbox"/>	280-90.1 thru 280-93	280-91 thru 280-94.5
<input type="checkbox"/>	280-111 thru 280-113	280-111 thru 280-113
<input type="checkbox"/>	280-127 thru 280-131	280-127 thru 280-131
<input type="checkbox"/>	281-3.	281-3 thru 281-4.1
<input type="checkbox"/>	281-27 thru 281-31	281-27 thru 281-32.1
<input type="checkbox"/>	281-43 thru 281-51	281-43 thru 281-52.3
<input type="checkbox"/>	281-59 thru 281-62.1	281-59 thru 281-62.1
<input type="checkbox"/>	281-95	281-95
<input type="checkbox"/>	281-129	281-129
<input type="checkbox"/>	282-9 thru 282-15	282-9 thru 282-16.1
<input type="checkbox"/>	282-25	282-25
<input type="checkbox"/>	282-35 thru 282-45	282-35 thru 282-45
<input type="checkbox"/>	283-10.1 thru 283-11	283-11 thru 283-12.1
<input type="checkbox"/>	284-7 thru 284-9	284-7 thru 284-10.1
<input type="checkbox"/>	284-25 thru 284-33	284-25 thru 284-34.1
<input type="checkbox"/>	285-9 thru 285-12.1	285-9 thru 285-12.1
<input type="checkbox"/>	285-25 thru 285-29	285-25 thru 285-29
<input type="checkbox"/>	287-1 thru 287-9	287-1 thru 287-10.1
<input type="checkbox"/>	287-17 thru 287-18.1	287-17
<input type="checkbox"/>	290-1.	290-1 thru 290-2.1
<input type="checkbox"/>	290-21 thru 290-25	290-21 thru 290-25
<input type="checkbox"/>	290A-15	290A-15 thru 290A-16.1
<input type="checkbox"/>	290A-31 thru 290A-41	290A-31 thru 290A-42.1
<input type="checkbox"/>	290D-1 thru 290D-21	290D-1 thru 290D-21
<input type="checkbox"/>	290D-31 thru 290D-33	290D-31 thru 290D-33

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	290E-11 thru 290E-37	290E-11 thru 290E-38.1
<input type="checkbox"/>	290F-5 thru 290F-15	290F-5 thru 290F-15
<input type="checkbox"/>	290G-7 thru 290G-9.	290G-7 thru 290G-9
<input type="checkbox"/>	290H-1 thru 290H-15	290H-1 thru 290H-16.1
<input type="checkbox"/>	290H-29 thru 290H-33	290H-29 thru 290H-31
<input type="checkbox"/>	290I-19 thru 290I-23	290I-19 thru 290I-23

VOLUME 25

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	293-17 thru 293-18.1	293-17 thru 293-18.1
<input type="checkbox"/>	293-35 thru 293-53	293-35 thru 293-54.3
<input type="checkbox"/>	293-75 thru 293-85	293-75 thru 293-85
<input type="checkbox"/>	293-181 thru 293-191	293-181 thru 293-192.7
<input type="checkbox"/>	293-201 thru 293-205	293-201 thru 293-206.1
<input type="checkbox"/>	293-217 thru 293-229	293-217 thru 293-230.3
<input type="checkbox"/>	302-33	302-33 thru 302-34.1
<input type="checkbox"/>	302-81	302-81 thru 302-82.1
<input type="checkbox"/>	302-88.1 thru 302-91	302-89 thru 302-92.7
<input type="checkbox"/>	302-108.1 thru 302-109	302-109 thru 302-110.1

VOLUME 27

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	322-15 thru 322-27	322-15 thru 322-28.1
<input type="checkbox"/>	322-71 thru 322-77	322-71 thru 322-78.1
<input type="checkbox"/>	322-91 thru 322-92.1	322-91 thru 322-92.2(1)

VOLUME 28

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	324-81	324-81 thru 324-82.1
<input type="checkbox"/>	326-2.1 thru 326-5	326-3 thru 326-5
<input type="checkbox"/>	326-19 thru 326-44.1	326-19 thru 326-44.1
<input type="checkbox"/>	326A-19 thru 326A-23	326A-19 thru 326A-24.1
<input type="checkbox"/>	326A-35 thru 326A-36.1.	326A-35 thru 326A-36.1
<input type="checkbox"/>	327-81 thru 327-83	327-81 thru 327-83
<input type="checkbox"/>	328-5 thru 328-21	328-5 thru 328-22.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	328-43 thru 328-52.1	328-43 thru 328-51
<input type="checkbox"/>	328-81 thru 328-143.	328-81 thru 328-144.5
<input type="checkbox"/>	328-181 thru 328-194.1	328-181 thru 328-194.1
<input type="checkbox"/>	328-207	328-207 thru 328-208.1
<input type="checkbox"/>	328-231 thru 328-233	328-231 thru 328-234.1
<input type="checkbox"/>	328-245	328-245 thru 328-246.1
<input type="checkbox"/>	328-261 thru 328-269	328-261 thru 328-270.1
<input type="checkbox"/>	328-279 thru 328-297	328-279 thru 328-298.1
<input type="checkbox"/>	328-305 thru 328-349	328-305 thru 328-350.1
<input type="checkbox"/>	328-365	328-365 thru 328-366.1
<input type="checkbox"/>	328-435 thru 328-499	328-435 thru 328-500.9
<input type="checkbox"/>	328-523 thru 328-552.3	328-523 thru 328-552.3
<input type="checkbox"/>	328-565 thru 328-577	328-565 thru 328-578.1
<input type="checkbox"/>	328-591 thru 328-595	328-591 thru 328-596.1
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<input type="checkbox"/>	328-633 thru 328-635	328-633 thru 328-636.1
<input type="checkbox"/>	328-651 thru 328-665	328-651 thru 328-666.3
<input type="checkbox"/>	328-677 thru 328-687	328-677 thru 328-688.1
<input type="checkbox"/>	328-697 thru 328-698.1	328-697 thru 328-698.1
<input type="checkbox"/>	328-721 thru 328-723	328-721 thru 328-724.1
<input type="checkbox"/>	328-733 thru 328-741	328-733 thru 328-742.1
<input type="checkbox"/>	328-761 thru 328-765	328-761 thru 328-766.1
<input type="checkbox"/>	328-779 thru 328-831	328-779 thru 328-832.3
<input type="checkbox"/>	328-843 thru 328-855	328-843 thru 328-856.1
<input type="checkbox"/>	328-865	328-865 thru 328-866.1
<input type="checkbox"/>	329-1 thru 329-17	329-1 thru 329-17
<input type="checkbox"/>	329-29 thru 329-59	329-29 thru 329-60.1
<input type="checkbox"/>	329-71 thru 329-97	329-71 thru 329-98.1
<input type="checkbox"/>	329-107 thru 329-155	329-107 thru 329-156.1
<input type="checkbox"/>	329-175 thru 329-215	329-175 thru 329-216.1
<input type="checkbox"/>	329-227 thru 329-387	329-227 thru 329-388.13

VOLUME 30

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	346-78.5 thru 346-78.9	346-78.5 thru 346-78.9
<input type="checkbox"/>	346-114.1 thru 346-115	346-115 thru 346-116.1

VOLUME 31

Revision

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	349-3.	349-3 thru 349-4.1
<input type="checkbox"/>	349-19 thru 349-20.1	349-19 thru 349-20.1
<input type="checkbox"/>	349-41	349-41 thru 349-42.1
<input type="checkbox"/>	349-51 thru 349-70.1	349-51 thru 349-70.5
<input type="checkbox"/>	349-76.3	349-76.3
<input type="checkbox"/>	350-12.1 thru 350-14.1	350-13 thru 350-14.3

VOLUME 32

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	359-31	359-31 thru 359-32.1
<input type="checkbox"/>	361A-23 thru 361A-34.3.	361A-23 thru 361A-34.3
<input type="checkbox"/>	361A-47 thru 361A-60.1.	361A-47 thru 361A-60.1
<input type="checkbox"/>	361A-71	361A-71 thru 361A-72.1
<input type="checkbox"/>	361A-89 thru 361A-93	361A-89 thru 361A-94.9
<input type="checkbox"/>	361A-101 thru 361A-122.3	361A-101 thru 361A-122.5
<input type="checkbox"/>	361A-133.	361A-133
<input type="checkbox"/>	361A-151.	361A-151 thru 361A-152.1
<input type="checkbox"/>	361A-160.1 thru 361A-161	361A-161 thru 361A-162.1
<input type="checkbox"/>	367A-23 thru 367A-24.1.	367A-23 thru 367A-24.1

VOLUME 34

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	394-35	394-35 thru 394-36.1
<input type="checkbox"/>	394-38.5 thru 394-38.9	394-38.5 thru 394-38.9

VOLUME 35

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	412-23	412-23 thru 412-24.1
<input type="checkbox"/>	412-47 thru 412-48.1	412-47 thru 412-48.1
<input type="checkbox"/>	412-69 thru 412-71	412-69 thru 412-71
<input type="checkbox"/>	412-83 thru 412-90.4(1)	412-83 thru 412-90.4(1)
<input type="checkbox"/>	412-97 thru 412-111.	412-97 thru 412-111
<input type="checkbox"/>	412-149 thru 412-155	412-149 thru 412-155

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VOLUME 36

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	418-32.1 thru 418-46.3	418-33 thru 418-46.3
<input type="checkbox"/>	418-94.5	418-94.5

VOLUME 38

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	No Material removed	441SA-1 thru 441SA-9 (file preceding 441-1)
<input type="checkbox"/>	441-29 thru 441-31	441-29 thru 441-31
<input type="checkbox"/>	441-53	441-53 thru 441-54.1
<input type="checkbox"/>	444-39	444-39 thru 444-40.1
<input type="checkbox"/>	444-64.9 thru 444-64.15	444-64.9 thru 444-64.15
<input type="checkbox"/>	450-7.	450-7
<input type="checkbox"/>	450-17 thru 450-33	450-17 thru 450-31
<input type="checkbox"/>	451-19	451-19

VOLUME 39

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	456-11	456-11 thru 456-12.1
<input type="checkbox"/>	456-31	456-31 thru 456-32.1
<input type="checkbox"/>	458D-33	458D-33 thru 458D-34.1
<input type="checkbox"/>	458D-45 thru 458D-47	458D-45 thru 458D-47
<input type="checkbox"/>	458D-80.1	458D-80.1
<input type="checkbox"/>	458D-111.	458D-111

VOLUME 40

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	460-9 thru 460-14.2(1).	460-9 thru 460-14.2(1)
<input type="checkbox"/>	460-23 thru 460-44.1	460-23 thru 460-44.1
<input type="checkbox"/>	460-53 thru 460-81	460-53 thru 460-82.1
<input type="checkbox"/>	460-100.1 thru 460-121	460-101 thru 460-122.25
<input type="checkbox"/>	460-138.6(3) thru 460-138.13	460-138.7 thru 460-138.14(5)

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	460-138.23 thru 460-153.	460-139 thru 460-154.13
<input type="checkbox"/>	460-165 thru 460-186.19.	460-165 thru 460-186.20(3)
<input type="checkbox"/>	460-186.29 thru 460-188.19	460-187 thru 460-188.20(17)
<input type="checkbox"/>	460-198.5 thru 460-198.15.	460-198.5 thru 460-198.15
<input type="checkbox"/>	460-227 thru 460-233	460-227 thru 460-234.1
<input type="checkbox"/>	469-7.	469-7 thru 469-8.1
<input type="checkbox"/>	469-33 thru 469-34.1	469-33 thru 469-34.1

VOLUME 41

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	470-73	470-73 thru 470-74.1
<input type="checkbox"/>	470A-13	470A-13 thru 470A-14.1
<input type="checkbox"/>	470B-1	470B-1 thru 470B-2.1
<input type="checkbox"/>	470B-17 thru 470B-21.	470B-17 thru 470B-22.3
<input type="checkbox"/>	470B-29	470B-29 thru 470B-30.1
<input type="checkbox"/>	470B-68.1 thru 470B-69.	470B-69 thru 470B-70.3
<input type="checkbox"/>	No Material removed	470CSA-1 (file preceding 470C-1)
<input type="checkbox"/>	470C-4.1 thru 470C-7	470C-5 thru 470C-7
<input type="checkbox"/>	470C-48.3	470C-48.3
<input type="checkbox"/>	470C-57	470C-57 thru 470C-58.1
<input type="checkbox"/>	470C-83 thru 470C-93.	470C-83 thru 470C-94.3
<input type="checkbox"/>	470C-113.	470C-113 thru 470C-114.1
<input type="checkbox"/>	470C-121.	470C-121
<input type="checkbox"/>	470C-133 thru 470C-137	470C-133 thru 470C-138.1
<input type="checkbox"/>	472-24.1 thru 472-36.1	472-25 thru 472-36.2(1)
<input type="checkbox"/>	472-36.11 thru 472-36.13	472-36.11 thru 472-36.13
<input type="checkbox"/>	472B-15 thru 472B-17.	472B-15 thru 472B-18.1

VOLUME 41A

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	473-33 thru 473-50.1	473-33 thru 473-50.3
<input type="checkbox"/>	473A-33 thru 473A-35	473A-33 thru 473A-36.1
<input type="checkbox"/>	473B-15	473B-15 thru 473B-16.1
<input type="checkbox"/>	473G-33	473G-33 thru 473G-34.1
<input type="checkbox"/>	473G-43 thru 473G-44.1.	473G-43 thru 473G-44.1
<input type="checkbox"/>	473G-53 thru 473G-58.1.	473G-53 thru 473G-58.3
<input type="checkbox"/>	474-15	474-15 thru 474-16.1
<input type="checkbox"/>	474-27	474-27 thru 474-28.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	474A-15	474A-15 thru 474A-16.1
<input type="checkbox"/>	474A-29 thru 474A-35	474A-29 thru 474A-36.1
<input type="checkbox"/>	474A-40.9	474A-40.9 thru 474A-40.10(1)
<input type="checkbox"/>	474A-40.26(1) thru 474A-40.31	474A-40.27 thru 474A-40.33
<input type="checkbox"/>	474B-33 thru 474B-34.1	474B-33 thru 474B-34.1
<input type="checkbox"/>	474B-42.2(3) thru 474B-42.2(13).	474B-42.2(3) thru 474B-42.2(13)

VOLUME 45

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	512-15 thru 512-16.1	512-15 thru 512-16.1
<input type="checkbox"/>	512-55 thru 512-58.1	512-55 thru 512-58.1
<input type="checkbox"/>	512-68.1 thru 512-69	512-69 thru 512-70.1
<input type="checkbox"/>	512-97 thru 512-101.	512-97 thru 512-101

VOLUME 48

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	549-2.1 thru 549-3	549-3 thru 549-4.1
<input type="checkbox"/>	549-15	549-15 thru 549-16.1
<input type="checkbox"/>	549-28.1 thru 549-33	549-29 thru 549-34.3
<input type="checkbox"/>	551-41	551-41 thru 551-42.1
<input type="checkbox"/>	551-55 thru 551-57	551-55 thru 551-58.1
<input type="checkbox"/>	551-91 thru 551-101.	551-91 thru 551-101
<input type="checkbox"/>	551-141 thru 551-152.23.	551-141 thru 551-152.23

VOLUME 49

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	560-5 thru 560-15.	560-5 thru 560-15
<input type="checkbox"/>	560-32.1 thru 560-33	560-33 thru 560-34.3
<input type="checkbox"/>	560-57 thru 560-70.1	560-57 thru 560-70.1
<input type="checkbox"/>	560A-15 thru 560A-16.1.	560A-15 thru 560A-16.1
<input type="checkbox"/>	560A-70.9 thru 560A-71.	560A-71 thru 560A-72.3
<input type="checkbox"/>	560A-79	560A-79 thru 560A-80.1
<input type="checkbox"/>	560A-91 thru 560A-97	560A-91 thru 560A-98.1
<input type="checkbox"/>	560B-19 thru 560B-20.1	560B-19 thru 560B-20.1
<input type="checkbox"/>	560B-43 thru 560B-46.1	560B-43 thru 560B-46.1

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<input type="checkbox"/>	560C-1	560C-1 thru 560C-2.1
<input type="checkbox"/>	560C-15 thru 560C-18.1	560C-15 thru 560C-18.1
<input type="checkbox"/>	560C-24.1 thru 560C-27	560C-25 thru 560C-28.1
<input type="checkbox"/>	560C-39 thru 560C-40.1	560C-39 thru 560C-40.1
<input type="checkbox"/>	560D-1 thru 560D-14.1	560D-1 thru 560D-14.3
<input type="checkbox"/>	560D-24.1	560D-24.1
<input type="checkbox"/>	560E-36.1 thru 560E-37	560E-37 thru 560E-38.1
<input type="checkbox"/>	560E-47 thru 560E-49	560E-47 thru 560E-50.1
<input type="checkbox"/>	560F-25 thru 560F-27	560F-25 thru 560F-28.1
<input type="checkbox"/>	560F-62.1 thru 560F-62.3	560F-62.1 thru 560F-62.3
<input type="checkbox"/>	560G-19	560G-19 thru 560G-20.1
<input type="checkbox"/>	560J-11 thru 560J-16.1	560J-11 thru 560J-15
<input type="checkbox"/>	564-5.	564-5 thru 564-6.1
<input type="checkbox"/>	564-15 thru 564-17	564-15 thru 564-18.1
<input type="checkbox"/>	564-47 thru 564-69	564-47 thru 564-70.1

VOLUME 51

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	579-11	579-11
<input type="checkbox"/>	579-37 thru 579-43	579-37 thru 579-43
<input type="checkbox"/>	579-57 thru 579-58.3	579-57 thru 579-58.3
<input type="checkbox"/>	579-145 thru 579-155	579-145 thru 579-156.1
<input type="checkbox"/>	579-169	579-169
<input type="checkbox"/>	579-183 thru 579-189	579-183 thru 579-189

VOLUME 52

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-5 thru I-7	I-5 thru I-8.1
<input type="checkbox"/>	I-21 thru I-27	I-21 thru I-28.1
<input type="checkbox"/>	I-145 thru I-167.	I-145 thru I-168.1
<input type="checkbox"/>	I-285	I-285
<input type="checkbox"/>	I-341 thru I-373.	I-341 thru I-374.1
<input type="checkbox"/>	I-431 thru I-433.	I-431 thru I-434.1
<input type="checkbox"/>	I-495 thru I-551.	I-495 thru I-552.1
<input type="checkbox"/>	I-609 thru I-635.	I-609 thru I-636.1
<input type="checkbox"/>	I-651 thru I-669.	I-651 thru I-670.1
<input type="checkbox"/>	I-687 thru I-689.	I-687 thru I-690.1
<input type="checkbox"/>	I-729 thru I-749.	I-729 thru I-750.1

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<input type="checkbox"/>	I-775 thru I-791	I-775 thru I-792.1
<input type="checkbox"/>	I-843	I-843 thru I-844.1
<input type="checkbox"/>	I-899 thru I-903	I-899 thru I-903

VOLUME 53

Revision

<input type="checkbox"/>	Title page thru I-905	Title page thru I-905
<input type="checkbox"/>	I-981 thru I-983	I-981 thru I-984.1
<input type="checkbox"/>	I-1003 thru I-1009.	I-1003 thru I-1010.1
<input type="checkbox"/>	I-1063 thru I-1065.	I-1063 thru I-1066.1
<input type="checkbox"/>	I-1077 thru I-1087.	I-1077 thru I-1088.1
<input type="checkbox"/>	I-1185 thru I-1209.	I-1185 thru I-1210.1
<input type="checkbox"/>	I-1231 thru I-1235.	I-1231 thru I-1236.1
<input type="checkbox"/>	I-1371 thru I-1381.	I-1371 thru I-1382.1
<input type="checkbox"/>	I-1397 thru I-1401.	I-1397 thru I-1401
<input type="checkbox"/>	I-1497 thru I-1503.	I-1497 thru I-1504.1
<input type="checkbox"/>	I-1527 thru I-1561.	I-1527 thru I-1562.1

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