

PUBLICATION UPDATE

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California Forms of Pleading and Practice Annotated

Publication 181 Release 180

November 2009

HIGHLIGHTS

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- **E-Discovery.** Ch. 195A, *Discovery: Discovery of Electronic Evidence (E-Discovery)*, has been updated to include modifications to the proposed rules of court changes affecting e-discovery, as adopted by the California Judicial Council effective August 14, 2009.
- **Same-Sex Marriage and Proposition 8.** This release updates several chapters with *Strauss v. Horton* (2009) 46 Cal. 4th 364, which holds Proposition 8 is a permissible constitutional amendment to limit the rights of people of the same sex to marry, the proposition is not applied retroactively to invalidate the approximately 18,000 same-sex marriages performed in 2008, and the proposition's limited exception to equal rights does not alter the general equal protection principles set forth in *In re Marriage Cases*.
- **2009 Legislation, Rules of Court, Regulations, Judicial Council Forms, and Latest Cases.** This release updates various chapters

throughout the publication with 2009 changes to California legislation and regulations, as well as the July 1, 2009 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 of 2009.

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

- Alternative Dispute Resolution
- Appeals
- Attorneys
- Churches and Religious Organizations
- Civil Procedure
- Civil Rights
- Class Actions
- Constitutional Law
- Contracts and Commercial Law
- Costs and Attorney's Fees
- Declaratory Relief
- Discovery
- Employment

- Initiatives
- Insurance
- Intellectual Property
- Judgments
- Juvenile Law
- Probate
- Public Administration
- Real Estate
- Trial
- Torts
- Unfair Competition
- Workers' Compensation

Release 180 of California Forms of Pleading and Practice Annotated updates the publication in many areas noted in more detail below.

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ALTERNATIVE DISPUTE RESOLUTION

Lis Pendens. Arbitration is not an “action” under Code Civ. Proc. § 405.5 governing the filing of a notice of lis pendens; however, a party to arbitration may simultaneously file and stay a court action pending the arbitration of a dispute that is claimed to be arbitrable and relevant to the action, giving grounds for filing a lis pendens and not itself waiving arbitration, so long as other steps are not taken in the

litigation that have the effect of waiving arbitration [*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal. App. 4th 1040]. See Ch. 30, *Using Alternative Dispute Resolution*, § 30.11[5][b].

Existence of Contract for Arbitration.

Analysis of the existence of a contract that is subject to contractual arbitration is reorganized, and a new subsection on the signature and effect of provisions requiring signature of all parties is added in light of *Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal. App. 4th 1351, which holds, as with the general rule, the signatory resisting enforcement of the contract or clause cannot escape liability without affirmatively establishing that the signatures of all parties were contemplated as being a condition precedent to the validity of the contract. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.21[1][b].

Attorney’s Fees and Costs. Where a contract containing an arbitration clause allows for court actions under the contract and provides for attorney fees and costs to the prevailing party in an action on the contract, the prevailing party in an action based on an independent complaint for declaratory and injunctive relief that addresses only the issue of whether an arbitration must proceed may be entitled to an award of fees and costs under the applicable standards, regardless of who might become the prevailing party in any subsequent arbitration [*Turner v. Schultz* (2009) 175 Cal. App. 4th 974]. See Ch. 33, *Contractual Arbitration: Appointment of Arbitrator and Conduct of Proceedings*, § 33.22.

Correction of Award. Correction of an arbitration award to provide for prejudgment interest not previously awarded or compensation for additional fees and costs

not previously awarded is outside the scope of a statutorily permitted correction [*Law Offices of David S. Karton v. Segreto* (2009) 176 Cal. App. 4th 1]. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.20.

APPEALS

Amicus Curiae and Attorney's Fees. In *Ramon v. County of Santa Clara* (2009) 173 Cal. App. 4th 915, the court of appeal held that when a party is an amicus curiae in one case and a party defending the same issue in another case, it may be liable for attorney's fees under Code Civ. Proc. § 1021.5 to a plaintiff under the private attorney general theory. See Ch. 22, *Amicus Curiae*, § 22.17.

Notice of Appeal. In *Bi-Coastal Payroll Services, Inc. v. California Insurance Guarantee Association* (2009) 174 Cal. App. 4th 579, the court of appeal held that a minute order that was not entitled "Notice of Entry" of judgment or order did not trigger the 60-day period to file a notice of appeal. See Ch. 42, *Appeal: Notice of Appeal*, § 42.13[2][a].

Appendix on Appeal. In *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal. App. 4th 967, the court of appeal held that conformed copies are preferred, but not required, for documents included in an appendix on appeal. See Ch. 44, *Appeal: Preparing and Filing the Record*, § 44.33[4][a].

ATTORNEYS

Attorney Not Liable to Beneficiary for Failing to Modify Trust Before Decedent's Death. In *Chang v. Lederman* (2009) 172 Cal. App. 4th 67, the court of appeal held that an estate trust beneficiary could not state a claim against the testator's attorney based on the attorney's failure to modify the trust to increase the beneficiary's bequest, allegedly in accordance with

the decedent's wishes, as the requested change was not memorialized in a written document. See Ch. 76, *Attorney Professional Liability*, § 76.200[3][b][ii].

CHURCHES AND RELIGIOUS ORGANIZATIONS

Scholarship Tax Credit Program Violated Establishment Clause. In *Winn v. Arizona Christian School Tuition Organization* (9th Cir. 2009) 562 F.3d 1002, the Ninth Circuit held that a state scholarship tax credit program, granting income tax credits to taxpayers who made contributions to nonprofit organizations awarding private school scholarships to children, some of which restricted the availability of scholarships to religious schools, violated the Establishment Clause even though the state did not directly decide whether particular sectarian organizations would receive program aid. See Ch. 110, *Churches and Religious Organizations*.

Resolution by Board of Supervisors Urging Cardinal to Withdraw Directive Instructing Against Same-Sex Couple Adoption of Children Did Not Violate Establishment Clause. In *Catholic League for Religious and Civil Rights v. City and County of San Francisco* (9th Cir. 2009) 567 F.3d 595, the adoption by a city board of supervisors of a non-binding resolution in response to a directive from a Catholic cardinal instructing the city's archdiocese that Catholic social services agencies should not place children in need of adoption with gay or lesbian couples, urging the cardinal, in his capacity as the head of the Congregation for the Doctrine of the Faith at the Vatican, to withdraw the directive did not violate the Establishment Clause by expressing disapproval of and hostility toward the Catholic religion. See Ch. 110, *Churches and Other Religious Organizations*.

CIVIL PROCEDURE

Judicial Notice—Grant Deeds. In *Lockhart v. MVM, Inc.* (2009) 175 Cal. App. 4th 1452, the court held that grant deeds are judicially noticeable under Evid. Code § 452(c). See Ch. 321, *Judicial Notice*, § 321.43[11][g].

Limitation of Actions—Death of Defendant. This chapter is updated with *Farb v. Superior Court* (2009) 174 Cal. App. 4th 678, which holds in an action arising from a surrogacy contract between a decedent and his former wife and a surrogate mother, it was undisputed that the complaint was filed more than one year after the decedent's death and that none of the enumerated exceptions in Code Civ. Proc. § 366.2 applied. In accordance with the plain language of Section 366.2, the one-year limitations period was not tolled during the minority of the children. Moreover, the one-year limitations period in Section 366.2 applied to an action on the liability of a deceased person, without regard to the location of the decedent's personal representative or estate. See Ch. 345, *Limitation of Actions*, § 345.20[8].

Limitation of Actions—Medical Negligence Against Public Entity. This chapter is updated with *Roberts v. County of Los Angeles* (2009) 175 Cal. App. 4th 474, which holds in action for medical negligence against public entities, plaintiffs must comply with both the six-month statute of limitations in the Government Claims Act (Gov. Code § 945.6) and the three-year statute in the Medical Injury Compensation Reform Act (MICRA) (Code Civ. Proc. § 340.5), and the latter statute establishes the outside date by which actions against health care providers, including public entities, must be brought. See Ch. 345, *Limitation of Actions*, § 345.53[10][b][vi].

Limitation of Actions—Holocaust Art.

This chapter is updated with a warning that a Ninth Circuit panel in August 2009 has held the limitation-period extension in Code Civ. Proc. § 354.3(c) for recovery of Holocaust-era artwork is invalid under the field-preemption doctrine because it “intrudes on the power to make and resolve war, a power reserved exclusively to the federal government by the Constitution” [*Saher v. Norton Simon Museum of Art at Pasadena* (9th Cir. 2009) 578 F.3d 1016]. See Ch. 345, *Limitation of Actions*, §§ 345.164, 345.187.

Anti-SLAPP Motion—Protected Activity. This chapter is updated with *McConnell v. Innovative Artists Talent and Literary Agency, Inc.* (2009) 175 Cal. App. 4th 169, which holds a talent agent's retaliation and wrongful termination claims arose out of defendant's conduct in preventing plaintiffs from performing their job duties, which was not protected activity; the mere fact that defendant's conduct occurred after plaintiffs filed their original complaint seeking a declaration that their employment contracts with defendant were illegal did not transform unprotected activity to protected activity within the meaning of the anti-SLAPP statute. See Ch. 376, *Motions to Strike: Anti-SLAPP*, § 376.43[2].

Summary Judgment—Complex Litigation. This chapter is updated with *Mangan Cathcart McCarthy v. CB Richard Ellis, Inc.* (2009) 174 Cal. App. 4th 106, which holds parties must comply with the summary judgment procedures mandated by statute and court rules and it is improper for parties to enter into a stipulated judgment that the trial court would have granted summary judgment in a matter for purposes of expediting an appeal; it is not the place of the parties, even if assigned to the complex litigation court, to rewrite the

Code of Civil Procedure for their own convenience and economic interests. See Ch. 537, *Summary Judgment*, § 537.12.

Vexatious Litigants—Identity. This chapter is updated with *Kobayashi v. Superior Court* (2009) 175 Cal. App. 4th 536, which holds the Judicial Council is required to keep a list of persons declared by courts to be vexatious litigants subject to prefilling orders, but it is not required to make the list public. In this case, the plaintiff falsely claimed he was not the same person as the one on the vexatious litigant list. Should this issue arise, consult *Kobayashi* for a list of suggestions for determining if the plaintiff is on the Judicial Council list and for suggestions of improving the verification process. Note: Plaintiff in this case was referred to the county district attorney's office for possible criminal prosecution for perjury. See Ch. 573, *Vexatious Litigants*, § 573.14.

CIVIL RIGHTS

No *Bivens* Claim Stated Against Former Attorney General or Former FBI Director by Detainee. In *Ashcroft v. Iqbal* (2009) 129 S. Ct. 1937, a *Bivens* action by a citizen of Pakistan who was arrested on criminal charges in the United States in the wake of the September 11, 2001, terrorist attacks and detained by federal officials, the former Attorney General and the former Director of the Federal Bureau of Investigation were entitled to qualified immunity as to allegations they adopted an unconstitutional policy subjecting him to harsh conditions of confinement on account of his race, religion, or national origin. The complaint did not plead factual matter that, if taken as true, stated a claim that defendants deprived him of his clearly established constitutional rights by failing to plead sufficient facts to state a claim for purposeful and unlawful discrimination. See Ch. 113, *Civil Rights: The Post-Civil*

War Civil Rights Statutes.

School Officials Entitled to Qualified Immunity for Violation of Student's Rights Through Search. In *Safford Unified School Dist. v. Redding* (2009) 129 S. Ct. 2633, the United States Supreme Court held that, although a 13-year-old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on a reasonable suspicion she had brought forbidden prescription and over-the-counter drugs to school because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, the school officials who ordered and conducted the unconstitutional search were entitled to qualified immunity from liability, because there was reason to question the clarity with which the right was established. See Ch. 113, *Civil Rights: The Post Civil-War Civil Rights Statutes*, and see Ch. 513, *Schools: Student Rights and Responsibilities*.

Prison-Delivery Rule Applies to Criminal and Civil Appeals. In *Silverbrand v. County of Los Angeles* (2009) 46 Cal. 4th 106, the California Supreme Court held that under the prison-delivery rule, which had previously only been applied to criminal appeals by self-represented prison inmates, the court of appeal erred in dismissing as untimely a notice of appeal by a state prison inmate of a trial court's dismissal of his medical malpractice lawsuit as barred by the statute of limitations. The inmate properly delivered the notice of appeal to prison authorities before the expiration of the 60-day deadline for appealing the judgment, even though the notice was not received by the superior court clerk until two days after the last day to file the notice of appeal had passed. See Ch. 114, *Civil Rights: Prisoners' Rights*.

Error to Dismiss Complaint for Failure to Exhaust Administrative Remedies Without Findings Prisoner Was Able to Exhaust Them. In *Marella v. Terhune* (9th Cir. 2009) 562 F.3d 983, a magistrate judge (and the district court by adopting the magistrate judge's recommendations and report) erred in concluding that, as a matter of law, although a prison's regulations explicitly created an exception to the timely filing requirement for an administrative grievance if an inmate did not have the opportunity to file the grievance during the filing period, an inmate's purported inability to file an administrative grievance due to his time in the prison hospital and in administrative segregation following a knife attack by fellow inmates of which he was complaining was not an exception to the timely filing requirement, because the magistrate judge did not make factual findings as to whether the inmate had access to the necessary forms and the ability to file during his stay in the hospital and prison infirmary or during administrative lockdown. See Ch. 114, *Civil Rights: Prisoners' Rights*.

Harmless Error to Order Involuntary Administration of Psychotropic Medication Mentally Disordered Defendant Absent From Hearing. In *People v. Fisher* (2009) 172 Cal. App. 4th 1006, the constitutional right of a mentally disordered offender to a fair hearing was violated by an order authorizing the state hospital to forcibly administer psychotropic medication, issued at a hearing at which he was absent for one day. He did not personally waive his right to be present and was not unable to attend the hearing. But the deprivation of his right to be present was harmless beyond a reasonable doubt, because his counsel thoroughly cross-examined the witness whose testimony was compelling, and the offender, who was thereafter present, was

given a full and fair opportunity to rebut the testimony but did not do so. The offender was not denied the right to a jury trial, because there is no federal or state constitutional or state statutory right to a jury trial, and substantial evidence supported the trial court's finding that he was a danger to others within the meaning of Welf & Inst. Code § 5300. See Ch. 114, *Civil Rights: Prisoners' Rights*.

Intentional Discrimination Need Not Be Shown for Disability Discrimination Under Unruh Act.

In *Munson v. Del Taco, Inc.* (2009) 46 Cal. 4th 661, pursuant to the request of the Ninth Circuit Court of Appeals, the California Supreme Court held that a plaintiff who establishes a violation of the Americans With Disabilities Act need not prove intentional discrimination in order to obtain damages for disability discrimination under the Unruh Act in violation of Civil Code § 51(f), disapproving two California Court of Appeal cases insofar as they held to the contrary. See Ch. 116, *Civil Rights: Discrimination in Business Establishments*.

Trustee's Comments to Mother of Trust Beneficiary Not Sexual Harassment Violating Civ. Code § 51.9.

In *Hughes v. Pair* (2009) 46 Cal. 4th 1035, alleged comments made by a trustee to the mother of the trust beneficiary during a single telephone conversation and a brief statement to the mother in person later the same day during a social event at a museum failed to establish "severe" or "pervasive" conduct necessary to pursue a claim of hostile environment sexual harassment under Civ. Code § 51.9, as those terms are interpreted under Title VII and FEHA in decisions pertaining to sexual harassment in the workplace. The mother also failed to allege facts establishing a violation of Civ. Code § 51.9 based on the quid pro quo form of sexual harassment. See Ch. 116,

Civil Rights: Discrimination in Business Establishments.

Private Marina Was Subject to Americans With Disabilities Act. In *Nicholls v. Holiday Panay Marina, L.P.* (2009) 173 Cal. App. 4th 966, an action under the ADA by a paraplegic plaintiff who leased a slip at a marina and sued the marina for lack of wheelchair access, the trial court erred in finding that the private marina was not a public accommodation subject to the ADA. The marina was on its face rental establishment subject to the ADA, the fact that the marina did not allow within the marina any functions open to the general public was not dispositive, and the trial court erroneously miscast the marina as a permanent lodging exempt from the ADA, because there was no evidence any marina tenants lived at the marina or regularly slept overnight on their boats. See Ch. 116, *Civil Rights: Discrimination in Business Establishments*.

Error to Dismiss FHA Action Claiming Discrimination in Underwriting Homeowners' Insurance Policies. In *Ojo v. Farmers Group, Inc.* (9th Cir. 2009) 565 F.3d 1175, a district court erred in dismissing a class action by an African-American homeowners' insurance policy owner against the homeowners' insurance company, alleging that he and other minorities received less favorable pricing than Caucasians as a result of a discriminatory credit evaluative and scoring system developed and administered by the insurer in violation of FHA. The court read the complaint as challenging credit scoring per se, when in fact it challenged only the use of undisclosed factors in credit scoring and the disparate impact that resulted and did not "impair" state law by challenging credit scoring per se. The court also erred in interpreting the state's credit scoring law as permitting disparate impact race discrimi-

nation despite evidence the state legislature intended to prohibit insurers from engaging in unfair discrimination, so that the federal FHA claim was not reverse-preempted by McCarran-Ferguson. See Ch. 117, *Civil Rights: Housing Discrimination*.

CLASS ACTIONS

Labor Union Lacks Standing to Bring Action on Behalf of Its Members Under Unfair Competition Law or Labor Code Private Attorneys General Act. The California Supreme Court has held that a labor union lacks standing to sue as an assignee or association of its members under the Unfair Competition Law [*see Bus. & Prof. Code § 17200 et seq.*] or the Labor Code Private Attorneys General Act of 2004 [*see Lab. Code § 2698 et seq.*]. The Court also held that an employee's representative action under the Labor Code Private Attorneys General Act need not satisfy class-action requirements [*Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal. 4th 993; *Arias v. Superior Court* (2009) 46 Cal. 4th 969]. See Ch. 120, *Class Actions*, §§ 120.11[2], 120.15[1], [4].

Proposition 64's Standing Requirements Apply Only to Class Representative. The California Supreme Court has held that the standing requirements imposed by Proposition 64 for a private action under the unfair competition law—a representative plaintiff must have suffered injury in fact and must have lost money or property as a result of the alleged unfair business practice of the defendant [*see Bus. & Prof. Code § 17204*]—apply only to the class representative, and unnamed class members need not show injury in fact or actual loss of money or property. The Court also held that in the context of an alleged fraudulent business practice, the class representative must demonstrate actual reliance on the allegedly deceptive or misleading statements of the defendant, in

accordance with settled principles regarding the element of reliance in ordinary fraud actions. Thus, the representative plaintiff need not plead or prove with an unrealistic degree of specificity that the plaintiff relied on particular misrepresentations or false statements when the alleged unfair practice is an extensive and long-term advertising campaign [*In re Tobacco II Cases* (2009) 46 Cal. 4th 298]. See Ch. 120, *Class Actions*, § 120.15[1].

Plaintiff Who Voluntarily Settles Lacks Standing to Pursue Class Action. A California court of appeal has held that a named plaintiff who voluntarily settles his or her individual claim lacks standing to proceed as a class representative, even if the settlement purports to reserve a right to pursue a “class claim” [*Watkins v. Wachovia Corp.* (2009) 172 Cal. App. 4th 1576]. See Ch. 120, *Class Actions*, § 120.15[1].

CONSTITUTIONAL LAW

Constitutional Amendment Versus Revision. This chapter is updated with *Strauss v. Horton* (2009) 46 Cal. 4th 364. *Strauss* holds that Proposition 8, which prohibits same-sex marriage after November 2008, is an amendment to the California Constitution, and that the distinction drawn by the California Constitution between an amendment and a revision does not turn on the relative importance of the measure, but rather upon the measure’s scope. See Ch. 126A, *Constitutional Law*, § 126A.13[3].

Same-Sex Marriages and Proposition 8. This chapter is updated with *Strauss v. Horton* (2009) 46 Cal. 4th 364, which holds Proposition 8 is a permissible constitutional amendment to limit the rights of people of the same sex to marry, the proposition is not an impermissible constitutional revision, and that it does not violate the separation of powers doctrine and is not invalid under an “inalienable rights” theory; and

applies both to marriages performed in California and to those performed in other jurisdictions. The Court observed that if there is to be a change to the state constitutional rule embodied in that measure, it must “find its expression at the ballot box.” The Court also concluded that Proposition 8 does not apply retroactively. Therefore, the approximately 18,000 marriages of same-sex couples that were performed between the time of the Court’s decision in *In re Marriage Cases* and the effective date of Proposition 8 (November 5, 2008) remain valid in all respects and must continue to be recognized in this state. The Court noted that Proposition 8 did not entirely repeal or abrogate a same-sex couple’s state constitutional rights of privacy, due process, and equal protection that the Court had previously recognized in *In re Marriage Cases* [*In re Marriage Cases* (2008) 43 Cal. 4th 757]. See Ch. 126A, Constitutional Law, § 126A.42[3][b].

Equal Protection and Proposition 8. The California Supreme Court has ruled that sexual orientation is a suspect classification for purposes of the California Constitution’s Equal Protection Clause. Therefore, statutes that treat persons differently because of their sexual orientation are subject to strict scrutiny [*see In re Marriage Cases* (2008) 43 Cal. 4th 757]. The ratification by the voters of Proposition 8, which added Cal. Const., art. I, § 7.5 to the state constitution effective November 5, 2008, limits the scope of equal protection in respect to marriage on the basis of sexual orientation by defining a valid marriage as being between a man and a woman. Per *Strauss v. Horton* (2009) 46 Cal. 4th 364, upholding the constitutionality of Proposition 8 “[w]ith respect to the specific subject of the designation of the word ‘marriage,’ Proposition 8 does change the rule, set forth in the majority opinion in the *Marriage*

Cases, that limiting access to this designation to opposite-sex couples constitutes an impermissible violation of the state equal protection clause. ... By incorporating into the California Constitution a specific provision that expressly restricts the designation of ‘marriage’ to the union of a man and a woman, Proposition 8 must be understood as creating a limited exception to the state equal protection clause as interpreted in the majority opinion in the *Marriage Cases*. ... This exception—although constituting the governing state constitutional rule with regard to the specific matter it addresses—does not alter the general equal protection principles set forth in the *Marriage Cases* and in other California decisions interpreting and applying the state constitutional equal protection clause. Those principles continue to apply in all other contexts.” See Ch. 126A, *Constitutional Law*, § 126A.63A.

CONTRACTS AND COMMERCIAL LAW

Advertising—Standing to Sue for CAN-SPAM Act Violations. In *Gordon v. Virtumundo, Inc.* (9th Cir. 2009) 575 F.3d 1040, the court discussed how to resolve a threshold issue in any private action based on a violation of the federal CAN-SPAM Act [15 U.S.C. § 7701 et seq.], which is whether the plaintiff meets the statutory standing requirements. That is, was the plaintiff an “Internet access service” provider, and was the plaintiff “adversely affected by” actionable statutory violations? See Ch. 14, *Advertising*, § 14.15[3][f][i].

Banks—Right of Setoff Extends to Recouping Overdraft and Charging Fee. In *Miller v. Bank of Am.* (2009) 46 Cal. 4th 630, the California Supreme Court held that a bank’s practice of recouping overdrafts and extracting insufficient funds fees from the customer’s overdrawn account is permissible in light of the unequivocal state-

ment in Fin. Code § 864(a)(2) that overdrafts and bank charges are not debts, meaning that they are not subject to the statute’s limitations on a bank’s right of setoff. See Ch. 95, *Banks, Deposits, and Checks*, § 95.294.

Negotiable Instruments—Claiming Statutory Damages Precludes Claim for Prejudgment Interest on Dishonored Check. In *Imperial Merchant Servs., Inc. v. Hunt* (2009) 47 Cal. 4th 381, the California Supreme Court answered the question, certified to it by the Ninth Circuit, whether a debt collector recovering on a dishonored check may recover both a service charge under Civ. Code § 1719(a)(1) and prejudgment interest under Civ. Code § 3287. The court held that the statutory damages prescribed in Civ. Code § 1719 are exclusive; therefore, a payee who recovers a service charge pursuant to Civ. Code § 1719 may not also recover prejudgment interest under Civ. Code § 3287. The case is discussed in comments to forms in Ch. 385, *Negotiable Instruments*, §§ 385.119[4], 385.120[4][a].

Usury—Structured Settlement Transfer Act. This chapter is updated with *321 Henderson Receivables Origination LLC v. Sioteco* (2009) 173 Cal. App. 4th 1059, which holds the transfer of structured settlement payments under the Structured Settlement Transfer Act [Ins. Code § 10136 et seq.] does not implicate the prohibition against usury in Cal. Const., art. XV, § 1 because a structured settlement transfer is not a loan or forbearance but is instead a sale, as indicated in Ins. Code § 10136(b). See Ch. 568, *Usury*, § 568.12[1].

COSTS AND ATTORNEY’S FEES

Including General Release in Settlement Offer Acceptable Under Code Civ. Proc. § 998. In *Linthicum v. Butterfield* (2009) 175 Cal. App. 4th 259, the court of appeal held that including a general release

as part of a settlement offer does not defeat an award of costs under Code Civ. Proc. § 998. See Ch. 174, *Costs and Attorney's Fees*, § 174.17[2].

Party May Recover Attorney's Fees for Work Done in Related Case. In *Ramon v. County of Santa Clara* (2009) 173 Cal. App. 4th 915, the court of appeal held that under Code Civ. Proc. § 1021.5, a party may recover attorney's fees for work performed by counsel in opposing an amicus curiae brief in a related lawsuit that resolved an issue in a present case. See Ch. 174, *Costs and Attorney's Fees*, § 174.56[1].

DECLARATORY RELIEF

Declaratory Relief Regarding Liability-Insurance Coverage Is Generally Unavailable to Injured Party Until Liability of Insured Is Settled. A California Court of Appeal has held that an injured party generally may not obtain declaratory relief against an insurer to establish that the injury is covered under the alleged tortfeasor's liability-insurance policy, if the injured party's suit against the tortfeasor is still pending. Declaratory relief is unavailable because until the tortfeasor's liability is settled, a court cannot be certain that a controversy will arise between the injured party and the insurer [*Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal. App. 4th 556]. See Ch. 182, *Declaratory Relief*, § 182.14[3].

DISCOVERY

Discovery—California Statutes Governing E-Discovery. Chapters 190 through 200 (Discovery), and Ch. 535, *Subpoena*, have been updated throughout to conform to the legislative changes enacted by the California Electronic Discovery Act [Stats. 200, ch. 5], effective June 29, 2009. The Act addresses the problems created by application of the general Discovery Act

rules to the specific issues that typically arise in e-discovery. Also included are the very recent changes to Cal. Rules of Court, Rule 3.724, adopted by the Judicial Council. These changes, adopted effective August 14, 2009, include some last-minute changes to the proposed rules as previously discussed in Ch. 195A, *Discovery: Discovery of Electronic Evidence (E-Discovery)*. Specifically, the period during which the "meet and confer" conference on e-discovery must be conducted, which was at least 45 days prior to the initial case management conference under the proposed rule, was changed to not less than 30 days before the initial conference in the version adopted by the Judicial Council. Thus, the e-discovery meet-and-confer requirement is subject to the same time frame as the general meet-and-confer provision under Rule 3.724. In addition, the version adopted by the Judicial Council eliminated language in the proposed version stating that the e-discovery meet-and-confer obligation was triggered by written notice that e-discovery was likely to be conducted in the case. In the final version, discussion of e-discovery issues is simply mandatory in all cases; no written notice is required. Last, proposed conforming changes to Rule 3.728 were eliminated as unnecessary and redundant. All of these changes have been integrated into Ch. 195A, *Discovery: Discovery of Electronic Evidence (E-Discovery)*.

Discovery—Sanctions. Ch. 192, *Sanctions for Discovery Misuse*, has been updated with discussion of *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal. App. 4th 967, a case presenting "the rare occasion" when the trial court abused its discretion by not imposing a terminating sanction for defendant's discovery misconduct. See Ch. 192, *Sanctions for Discovery Misuse*, § 192.13[3][b][iii].

Discovery—Subpoena Duces Tecum.

Ch. 535, *Subpoena*, has been updated with discussion of *Terry v. SLICO* (2009) 175 Cal. App. 4th 352, in which the court held that service of the deposition subpoena on nonparty witness was effective despite absence of a supporting affidavit or declaration. Code Civ. Proc. § 2020.510(b), providing that a deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated, controlled, prevailing over Code Civ. Proc. § 1987.5, which provides that service of subpoena duces tecum issued before trial without copy of affidavit is invalid. See Ch. 535, *Subpoena*, § 535.17[3].

Discovery—Revised Judicial Council

Form SUPB-200. Ch. 535, *Subpoena*, has been updated with revised Judicial Council Form SUPB-002, Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration. *See* Ch. 535, *Subpoena*, § 535.61[1].

EMPLOYMENT

Age Discrimination in Employment Act Does Not Authorize Mixed-Motive Age-Discrimination Claims. The U.S. Supreme Court has held that the ADEA does not authorize mixed-motive age-discrimination claims. Rather, a plaintiff claiming disparate treatment must prove by a preponderance of the evidence (which may be direct or circumstantial) that age was the “but-for” cause of the employer’s adverse action [29 U.S.C. § 623(a)(1)]. Therefore, in an ADEA case the burden of proof never shifts to the employer to show that it would have taken the adverse action regardless of age [*Gross v. FBL Fin. Servs., Inc.* (2009) 174 L. Ed. 2d 119]. *See* Ch. 115, *Civil Rights: Employment Discrimination*, § 115.23[2][a], [b].

Employer Can Discard Test Results to Avoid Disparate Impact Only if There Is Strong Basis in Evidence to Believe Use of Test Results Will Result in Disparate-Impact Liability. The United States Supreme Court has held that under Title VII, before an employer can discard test results to avoid a disparate impact on minority candidates—an act that would itself constitute intentional race-based discrimination against those who did well on the test—the employer must have a strong basis in evidence to believe it will be subject to disparate-impact liability if it fails to take the race-conscious, discriminatory action of discarding the test results [*Ricci v. DeStefano* (2009) 174 L. Ed. 2d 490]. *See* Ch. 115, *Civil Rights: Employment Discrimination*, § 115.30[4][c].

Plaintiff Under Labor Code Private Attorneys General Act Must Have Suffered Injury. The California Supreme Court has held that an employee has standing to sue an employer to collect civil penalties under the Labor Code Private Attorneys General Act of 2004 [*see* Lab. Code § 2698 et seq.] only if the employee suffered injury from the employer’s unlawful action; a labor union, therefore, lacks standing to sue as an assignee or association of injured members. The Court also held that an employee’s representative action under the Act need not satisfy class-action requirements [*Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal. 4th 993; *Arias v. Superior Court* (2009) 46 Cal. 4th 969]. *See* Ch. 250, *Employment Law: Wage and Hour Disputes*, §§ 250.30, 250.33[2].

FAMILY LAW

Same-Sex Marriages. This chapter is updated with *Strauss v. Horton* (2009) 46 Cal. 4th 364, which holds Proposition 8 is a permissible constitutional amendment to limit the rights of people of the same sex to

marry, the proposition is not an impermissible constitutional revision, and that it does not violate the separation of powers doctrine and is not invalid under an “inalienable rights” theory; and applies both to marriages performed in California and to those performed in other jurisdictions. The Court observed that if there is to be a change to the state constitutional rule embodied in that measure, it must “find its expression at the ballot box.” The Court also concluded that Proposition 8 does not apply retroactively. Therefore, the approximately 18,000 marriages of same-sex couples that were performed between the time of the Court’s decision in *In re Marriage Cases* and the effective date of Proposition 8 (November 5, 2008) remain valid in all respects and must continue to be recognized in this state. The Court noted that Proposition 8 did not entirely repeal or abrogate a same-sex couple’s state constitutional rights of privacy, due process, and equal protection that the Court had previously recognized in *In re Marriage Cases* [*In re Marriage Cases* (2008) 43 Cal. 4th 757]. See Ch. 359, *Marriage*, § 359.13[4], and see Ch. 429, *Privacy*, § 429.1612[c].

INITIATIVES

Initiative as Constitutional Amendment Versus Revision. This chapter is updated with *Strauss v. Horton* (2009) 46 Cal. 4th 364, which holds an initiative that makes very significant changes constitutes only an amendment to the state constitution if its changes nonetheless operate functionally within a relatively narrow range of subject matter, and with *Rippon v. Bowen* (2008) 160 Cal. App. 4th 1308, which holds the question of whether an initiative constitutes an amendment or a revision requires analysis of the statute on its face. See Ch. 302, *Initiative, Referendum, and Recall*, § 302.12[7].

INSURANCE

Utility’s Statutory Immunity Barred Homeowner From Recovering Implied Contractual Immunity. In *Prince v. Pacific Gas & Electric Co.* (2009) 45 Cal. 4th 1151, the California Supreme Court held that a utility’s immunity from liability to a tort victim under the recreational-use immunity of Civ. Code § 846 prevented a landowner from obtaining implied contractual indemnity from the utility for the landowner’s own liability to the victim. See Ch. 300, *Indemnity and Contribution*, §§ 300.61[5], 300.63[1].

Prop. 51 Does Not Defeat Liability Based on Nondelegable Duty. In *Koepnick v. Kashiwa Fudosan America, Inc.* (2009) 173 Cal. App. 4th 32, the court of appeal held that Proposition 51 does not limit the vicarious liability of the hirer of an independent contractor when the hirer’s liability is based on the nondelegable duty doctrine. See Ch. 300, *Indemnity and Contribution*, § 300.63[3][f].

INTELLECTUAL PROPERTY

Trademark Infringement—Criteria for Ordering Product Recall. In *Marlyn Nutraceuticals v. Mucos Pharma GmbH & Co.* (9th Cir. 2009) 571 F.3d 873, the Ninth Circuit adopted criteria developed by the Third Circuit for use by a district court in determining whether to require a product recall in a trademark infringement case. After considering those criteria, if the court finds that leaving the infringing product in the hands of resellers and end-users will cause a substantial risk of danger to the public, the court should order a recall. See Ch. 549, *Trademarks and Trade Names*, § 549.91[5].

JUDGMENTS

Judgment Debtor’s Property May Be Turned Over to Levying Officer or Receiver, Not to Judgment Creditor. In

Palacio Del Mar Homeowners Assn., Inc. v. McMahon (2009) 174 Cal. App. 4th 1386, the court of appeal held that pursuant to Code Civ. Proc. § 708.205(a), after an examination regarding a judgment debtor's interest in property in the possession or under the control of the judgment debtor or a third person to be applied toward the satisfaction of a money judgment, property may be ordered turned over to a levying officer or a receiver, but not to the judgment creditor directly. See Ch. 254, *Executions and Enforcement of Judgments*, § 254.227.

JUVENILE LAW

Emancipation of Minors—Medical Emancipation. This chapter is updated with a new section reviewing California's variety of "limited medical emancipation" statutes. See Ch. 245, *Emancipation of Minors*, § 245.14[5].

PROBATE

Vital Records—Out-of-State Residency Does Not Bar Obtaining Change of Gender on California Birth Certificate. In *Somers v. Superior Court* (2009) 172 Cal. App. 4th 1407, the court held that out-of-state residency did not bar the out of state resident from obtaining a change of gender on a California birth certificate under Health & Safety Code § 103425. See Ch. 99, *Birth & Death*, §§ 99.13, 99.22, 99.35.

No Contest Clauses—Trust Reformation in Accordance With Grantors' Intent Would Not Violate No Contest Clause. In *Giammarrusco v. Simon* (2009) 171 Cal. App. 4th 1586, the court found that language in trust documents establishing three methods of exercising a limited power of appointment was ambiguous, and that reformation in accordance with the grantors' intent did not violate a no contest clause. The court ex-

plained that the mere name of the remedy sought, i.e. modification, reformation or interpretation, did not dictate whether a no contest clause would be violated because substance, the effect of the proposed action, and not form, controlled. See Ch. 444, *Will Contests*, § 444.14, and Ch. 560, *Trusts: Express*, § 560.16.

No Contest Clauses—Petition Challenging Exercise of Fiduciary Power Did Not Violate No-Contest Clause. In *Bradley v. Gilbert* (2009) 172 Cal. App. 4th 1058, 1071, the court held that a proposed petition by a decedent's son as a successor trustee of two trusts would not constitute a contest of a third trust and would not violate a no contest clause as a matter of public policy, because the petition was a pleading challenging the exercise of a fiduciary power within the means of Prob. Code § 21305(b)(6). See Ch. 444, *Will Contests*, § 444.14, and Ch. 560, *Trusts: Express*, § 560.16.

Probate—Prob. Code § 8226(c) Applies Only to Those Who Receive Notice. In *Estate of Kelly* (2009) 172 Cal. App. 4th 1367, the court held that the time limits in Prob. Code § 8226(c) did not apply to bar as untimely a petition for probate of a holographic will when the will proponent never received notice of the petition for letters of administration, as required to trigger the statute. The court concluded that Prob. Code § 8226(c) applies only to those who have received notice of a petition for letters of administration pursuant to the notice provisions of the California Probate Code. See Ch. 444, *Will Contests*, § 444.16.

Probate—Time Limits of Prob. Code § 8226(c) Bar Petition to Admit Untimely Holographic Will. In *Estate of Earley* (2009) 173 Cal. App. 4th 369, the court held that the trial court properly found that a petition to admit a holographic will to

probate was untimely under Prob. Code § 8226(c) when the petition was filed more than five months after the determination of intestacy and more than three months after administrator discovered will. See Ch. 444, *Will Contests*, § 3.

PUBLIC ADMINISTRATION

Due Process—Timing of Hearing. This chapter is updated with *Kolter v. Commission on Professional Competence of the Los Angeles Unified School Dist.* (2nd 2009) 170 Cal. App. 4th 1346, which holds that the governing board of the Los Angeles Unified School District properly met in closed session consistent with Gov. Code § 54957 to begin the process to dismiss a permanent certificated teacher without giving the teacher the 24-hour notice otherwise required by Gov. Code § 54957. This was because the 24-hour notice requirement did not apply when the public employee had the right to an evidentiary hearing under Educ. Code § 44934 subsequent to the closed session. Furthermore, the teacher did not have a due process right to notice and opportunity to be heard before the governing board began the dismissal proceedings. See Ch. 470A, *Due Process Restrictions on Public Agencies*, § 470A.42[1].

Public Agency Meetings—Personnel Exemption. This chapter is updated with *Kolter v. Commission on Professional Competence of the Los Angeles Unified School Dist.* (2009) 170 Cal. App. 4th 1346, which holds that The governing board of the Los Angeles Unified School District properly met in closed session consistent with Gov. Code § 54957 to begin the process to dismiss a permanent certificated teacher without giving the teacher the 24 hour notice otherwise required by Gov. Code § 54957. This was because the 24 notice requirement did not apply when the public employee had the

right to an evidentiary hearing under Educ. Code § 44934 subsequent to the closed session. Furthermore, the teacher did not have a due process right to notice and opportunity to be heard before the governing board began the dismissal proceedings. See Ch. 470B, *Public Agency Meetings*, § 470B.13[2].

Public Agency Meetings—Personnel

Exemption. This chapter is updated with *Hofman Ranch v. Yuba County Local Agency Formation Commission* (2009) 172 Cal. App. 4th 805, which holds that a local agency formation commission properly conducted a closed session personnel evaluation of the executive officer of the agency under Gov. Code § 54957 because that officer was considered to be an employee of the agency for purposes of Gov. Code § 54957 even though he was a contractor hired to provide executive officer services. See Ch. 470B, *Public Agency Meetings*, § 470B.13[2].

Public Records Act—Law Enforcement Records.

This chapter is updated with *Dixon v. Superior Court* (2009) 170 Cal. App. 4th 1271, which holds that coroner and autopsy reports that constitute investigations of a suspected homicide death are exempt from disclosure under the law enforcement records exemption [Gov. Code § 6254(f)] when the prospect of criminal law enforcement proceedings is concrete and definite. See Ch. 470C, *Public Records Act*, § 470C.13[9].

Public Records Act—Records Exempt

Under Other Laws. This chapter is updated with *People v. Gaines* (2009) 46 Cal. 4th 172, which holds that when a trial court improperly failed to review a peace officer's personnel records in camera under the provisions of Penal Code § 832.7 and Evid. Code § 1043(b), the proper remedy was to remand the matter to the trial court with an

order to review the records. The Supreme Court also held that if relevant information in confidential personnel records was not disclosed, then the judgment is reversible only if there is a reasonable probability that a different result would have occurred if the information had been disclosed. See Ch. 470C, *Public Records Act*, § 470C.13[14].

Public Records Act—Records Exempt Under Other Laws. This chapter is updated with *McMahon v. City of Los Angeles* (2009) 172 Cal. App. 4th 1324, which holds that a police officer did not have the right under the Public Safety Officers Procedural Bill of Rights Act (POBRA) provisions [Gov. Code §§ 3305, 3306.5] to review all investigative materials maintained by the police department related to complaints against the officer, but only those materials that contained complaints or adverse comments against the officer so that the officer had the opportunity to respond to the complaints or adverse comments. See Ch. 470C, *Public Records Act*, § 470C.13[14].

Public Records Act—Public Interest Exemption. This chapter is updated with *County of Santa Clara v. Superior Court* (2009) 170 Cal. App. 4th 1301, which holds that by the County of Santa Clara is required to disclose geographic information system (GIS) base maps prepared by the county because the public interest exemption [Gov. Code § 6255] did not prohibit disclosure because the public interest in disclosure outweighed the public interest in non-disclosure. The court of appeal weighed disclosure interests (public scrutiny of public records) against non-disclosure interests (financial and security interests), and found that the balance between those two interests justified disclosure of the information. Furthermore, the court held that the California Public Records Act [Gov. Code § 6254.9] did not

provide for copyright protection of public records maintained by the county, and that the county could not insist on an end user agreement as a condition of disclosure to protect any copyright interest. See Ch. 470C, *Public Records Act*, § 470C.13[55].

Public Records Act—Judicial Enforcement of Rights. This chapter is updated with *County of Santa Clara v. Superior Court* (2009) 171 Cal. App. 4th 119, which holds that taxpayers could properly bring a declaratory and injunctive relief action against local and state government bodies (including cities, counties, and the state of California, among others) under Code Civ. Proc. § 526a to challenge the illegal expenditure of public funds by those bodies related to public records. Litigation related to public records is not limited to challenges under the California Public Records Act. See Ch. 470C, *Public Records Act*, § 470C.17[1].

Public Administrative Law Judges—Multiple Roles of Agencies. This chapter is updated with *Morongo Band of Mission Indians v. State Water Resources Control Board* (2009) 45 Cal. 4th 731, which holds that due process of law was not violated when an attorney for the State Water Resources Control Board was the agency prosecutor in a specific administrative proceeding and that same agency attorney advised the Board in an unrelated administrative proceeding. In so holding, the California Supreme Court concluded that neither due process of law nor the California APA are violated by combining advocacy and advising functions within the same agency so long as there is separation of functions internally on a case by case basis. Thus, the same agency employee could not perform conflicting functions (advocacy versus advising) in the same case. To establish that the tribunal is biased in the due process manner requires a

showing of actual bias when separation of function issues are the bases for showing bias. The probability of bias standard was rejected by the court in this setting, and that standard only applies when there are disqualifying financial interests. In so holding, the Supreme Court disapproved of the California Court of Appeal decision in *Quintero v. City of Santa Ana* (2003) 114 Cal. App. 4th 810 (an agency attorney who performs conflicting roles of advocacy and advising agency in unrelated cases violate due process of law). See Ch. 473E, *Public Administrative Law Judges*, § 473E.8[a].

Agency Adjudication Hearings—Administrative Hearsay. This chapter is updated with *Molenda v. Department of Motor Vehicles* (2009) 172 Cal. App. 4th 974, which holds that forensic lab blood test results were not admissible in evidence in DMV administrative hearing because the Department of Justice (DOJ) lab report containing the test results was not prepared at or near the time of the recorded event, as required for the public employee records exception [Evid. Code § 1280(b)] to the hearsay rule. Thus, it was not an abuse of discretion for the trial court to exclude the lab report of the blood test results from admission into evidence. Preparation of the report one week after the analysis was completed was not sufficient in the absence of any information as to when the test results were entered into the lab database. Also, Veh. Code § 23612(g)(2) permits the DMV to receive or retrieve electronically evidence of a licensee's blood alcohol results directly from a government forensic database and provides that the electronic information is the best available evidence of the test results, but Veh. Code § 23612(g)(2) is not an exception to the hearsay rule. Thus, the lab report could be challenged on hearsay grounds notwithstanding compliance with the requirements

of Veh. Code § 23612(g)(2) Furthermore, the PAS test results were not admissible because of inadequate foundation since there was insufficient evidence that the test results met the foundations requirements of the DMV regulations (Tit. 17 Cal. Code Regs. §§ 1215-1222.2). The evidence related to PAS test results also did not meet the foundational requirements of properly functioning equipment, a properly administered test, and a qualified operator. Finally the DMV cannot rely upon the presumption of official duty codified in Evid. Code § 664 to establish the foundation for admissibility of the PAS test results. See Ch. 473F, *Agency Adjudication Hearings*, § 473F.32[1].

Agency Adjudication Hearings—Administrative Hearsay. This chapter is updated with *Bledsoe v. Biggs Unified School District* (2009) 170 Cal. App. 4th 127, which holds that the admission into evidence of a prior administrative law judge decision was permissible under Gov. Code § 11513(c) because the ALJ decision was reliable evidence. That decision, which was hearsay, properly supplemented other evidence under Gov. Code § 11513(d), and did not consume an undue amount of time under Gov. Code § 11513(f). The prior judge's decision assisted in proving that two teachers had special training and experience for teaching community day school, and therefore the school district was justified in laying off more senior teachers and retaining these two teachers consistent with the requirements of Educ. Code § 44955(d). The prior ALJ decision addressed a prior reduction in force by the same school district, and the qualifications of the same two teachers were discussed in that prior decision. See Ch. 473F, *Agency Adjudication Hearings*, § 473F.32[1].

Agency Adjudication Hearings—Privilege Against Self-Incrimination.

This chapter is updated with *Spielbauer v. County of Santa Clara* (2009) 45 Cal. 4th 704, which holds that a county could terminate a county employee for insubordination based on the employee's assertion of the privilege against self-incrimination as grounds for refusal to answer questions in a county internal investigation of the employee's conduct without the county granting the employee immunity from criminal prosecution based upon answers to those questions. The Supreme Court explained that a public employee can be compelled by threat of job discipline to answer employer's questions so long as the employee is not required to waive the constitutional protection against criminal use of the answers. The public employer is not required to seek and obtain a formal grant of immunity as a condition of requiring answers to questions. See Ch. 473F, *Agency Adjudication Hearings*, § 473F.33[2][b].

Agency Adjudication Hearings—Res Judicata and Collateral Estoppel. This chapter is updated with *State Board of Chiropractic Examiners v. Superior Court* (2009) 45 Cal. 4th 963, which holds that a state employee pursuing a whistleblower retaliation complaint under Gov. Code § 8547.8 against agency officials where the state employee worked was only required to pursue a complaint with the State Personnel Board under Gov. Code § 19683. The employee was not required to request a hearing before an ALJ working for the State Personnel Board (SPB), nor was the employee required to seek judicial review under administrative mandamus before filing a civil action for damages based on whistleblower retaliation. The employee was only required to receive the findings of the executive officer of the SPB based on review of the complaint. The employee was not required to exhaust administrative or judicial remedies to challenge those find-

ings before filing a civil lawsuit. Furthermore, the executive officer's findings (which were adverse to the employee) were not binding on the employee as a matter of issue preclusion because the executive officer's findings were not a final judgment following an administrative hearing. See Ch. 473F, *Agency Adjudication Hearings*, § 473F.41[1].

Agency Adjudication Decisions—Consequences of Agency Decisions. This chapter is updated with *County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal. App. 4th 1577, which holds that a county civil service commissions' decision to reduce the penalty awarded (from demotion in rank to a 30-day suspension without back pay) against a sergeant who allegedly made false statements and was found to have acted with insubordination and willful disobedience during the investigation of a gender harassment claim against him brought by a female deputy was an abuse of discretion given the seriousness of the employee misconduct by the sergeant. See Ch. 473G, *Agency Adjudication Decisions*, § 473G.35[2].

Timing of Judicial Review— Exhaustion of Administrative Remedies. This chapter is updated with *Lloyd v. County of Los Angeles* (2009) 172 Cal. App. 4th 320, which holds that a former county employee who filed a whistleblower retaliation complaint against his former employer did not have to exhaust either an internal administrative remedy or the remedy provided by Lab. Code § 98.7 (filing a complaint with the Labor Commissioner) before filing his lawsuit in superior court. See Ch. 474A, *Timing of Judicial Review*, § 474A.11[3][a].

Timing of Judicial Review— Commencement and Running of Limitation

Period. This chapter is updated with *Tarkington v. California Unemployment Insurance Appeals Board* (2009) 172 Cal. App. 4th 1494, which holds that equitable tolling of the applicable statute of limitations [Unemp. Ins. Code § 410] for challenging denial of unemployment insurance benefits by filing a petition for a writ of administrative mandate applied and continued after the superior court denied reconsideration of an order sustaining demurrer for misjoinder of parties until filing of new petition for writ of administrative mandate correcting that error. See Ch. 474A, *Timing of Judicial Review*, § 474A.20[3].

Timing of Judicial Review—Expedited Judicial Review of First Amendment Claims. This chapter is updated with *Stearn v. County of San Bernardino* (2009) 170 Cal. App. 4th 434, which holds that the 21-day statute of limitations codified in Code Civ. Proc. § 1094.8 (d) for actions seeking to review issuance of permits that affect expressive conduct did not apply to a challenge by a third-party resident of a county to a decision of the county board of supervisors to approve 14 conditional use permits requested by a billboard advertiser for billboards to be placed in the desert. See Ch. 474A, *Timing of Judicial Review*, § 474A.20[4].

Cable Television Access and Fees. This chapter is updated with a new section on the access of cable television operators to a real property, and a revised analysis of permissible fees for delinquent payment of cable television fees. See Ch. 484, *Radio and Television*, §§ 484.17[2][a1], [e].

Sanitation Districts. This chapter is updated with several new sections on sanitary districts covering such topics as formation, powers, construction contracts, and liability for damages. See Ch. 511, *Sanitation and Sewerage Districts*, § 511.15.

REAL ESTATE

Boundaries—Validating Acts. This chapter is updated with a new section on Validating Acts, which according to non-binding legislative history materials, for nearly 70 years, the Legislature's annual Validating Acts have boosted the stability and credit ratings of state and local bonds. The Validating Acts cure public officials' mistakes that might otherwise invalidate boundary changes. However, the Acts do not protect against fraud, corruption, or unconstitutional actions. See Ch. 101, *Boundaries*, § 101.16[4].

Lis Pendens. Arbitration is not an “action” under Code Civ. Proc. § 405.5 governing the filing of a notice of lis pendens; however, a party to arbitration may simultaneously file and stay a court action pending the arbitration of a dispute that is claimed to be arbitrable and relevant to the action, giving grounds for filing a lis pendens and not itself waiving arbitration, so long as other steps are not taken in the litigation that have the effect of waiving arbitration [*Manhattan Loft, LLC v. Mercury Liquors, Inc.* (2009) 173 Cal. App. 4th 1040]. See Ch. 30, *Using Alternative Dispute Resolution*, § 30.11[5][b].

Condominiums and Other Common Interest Developments. The Davis-Stirling Common Interest Development Act sets forth requirements that must be met before a homeowners' association may file a complaint for damages against the builder, developer, or general contractor based upon a claim for defects in the design or construction of the development. The expiration date of those provisions has been extended from July 1, 2010, to July 1, 2017. See Ch. 124, *Condominiums and Other Common Interest Developments*, § 124.26.

Easement by Necessity. In *Murphy v.*

Burch (2009) 46 Cal. 4th 157, the California Supreme Court held that when the claimant of an easement by necessity traces common ownership back to the federal government and seeks to establish an implied reservation of an access right-of-way, the claimant bears the burden of producing evidence on the issues regarding the government's intent to reserve an easement and the government's lack of power to condemn; an easement is not a matter of necessity when the federal government had the power of eminent domain to gain access to its property and strict necessity may be extinguished when a sovereign owner failed to exercise that power. See Ch. 240, *Easements*, § 240.13.

Homesteads and Bankruptcy Actions.

This chapter is updated with a new section on the use of the homestead exemption in forced and unforced sales of real property in bankruptcy proceedings. See Ch. 294, *Homesteads*, § 294.13

Lost Papers—Evidentiary Proof. This chapter is updated with a new section on proving the content of a lost writing with other evidence under the secondary evidence rules and the use of oral testimony. See Ch. 356, *Lost Papers*, § 356.27.

Mechanics' Liens—Demolition and Removal. This chapter is updated with *United Rentals Northwest, Inc. v. Snider Lumber Products, Inc.* (2009) 174 Cal. App. 4th 1479, which holds since "work of improvement" is defined to include demolition and removal of buildings, the entirety of a work of improvement can consist of the demolition or removal of a building. There is no basis for the view that removal of a building—or anything else included in the definition—only counts if something else is done to the land in addition. See Ch. 361, *Mechanics' Liens*, § 361.11[3][a].

Mechanics' Liens—Unlicensed Con-

tractor. This chapter is updated with *Goldstein v. Barak Construction* (2008) 164 Cal. App. 4th 845, which holds Bus. & Prof. Code § 7031 represents legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and applies even when a person for whom work was performed knew the contractor was unlicensed. This chapter is also updated with *Great West Construction, Inc. v. WSS Industrial Construction, Inc.* (2008) 162 Cal. App. 4th 581, which holds a subcontractor who is unlicensed cannot maintain an action against a general contractor for work performed under a construction service agreement. See Ch. 361, *Mechanics' Liens*, § 361.152[4].

Foreclosure Protection for Federally Related Mortgage Loan. In 2009, Congress established a 90-day notice to vacate requirement in the Protecting Tenants at Foreclosure Act [P.L. 111-22, S. 896]. This requirement applies to any foreclosure on a federally related mortgage loan or on any dwelling or residential real property after May 20, 2009 [P.L. 111-22, sec. 702, 123 Stats. 1660-1661]. As of August 2009, the California Legislature was in the process of amending Code Civ. Proc. § 1161b to extend the notice period from 60 to 90 days if required by any other provision of state or federal law [SB 483, Corbett]. See Ch. 555, *Trust Deeds and Real Property Mortgages*, § 555.51A[6].

Foreclosure Protection for Tenants. In 2009, Congress established a 90-day notice to vacate requirement in the Protecting Tenants at Foreclosure Act [P.L. 111-22, S. 896]. This requirement applies to any foreclosure on a federally related mortgage loan or on any dwelling or residential real property after May 20, 2009 [P.L. 111-22, sec. 702, 123 Stats. 1660-1661]. As of

August 2009, the California Legislature was in the process of amending Code Civ. Proc. § 1161b to extend the notice period from 60 to 90 days if required by any other provision of state or federal law [SB 483, Corbett]. See Ch. 332, *Landlord and Tenant: The Tenancy*, § 332.20[5].

Timber—Wrongful Removal and Delivery. This chapter is updated with several new sections on the wrongful removal of timber, specifically addressing the issues of measure of damages, evidentiary issues, punitive damages, and post-trial challenges to the method of valuation. Another new section addresses the failure to deliver timber with the land conveyed. See Ch. 350, *Logs and Timber*, §§ 350.12, 350.14A.

Subdivision Map Act. In 2009 Stats., Ch. 18, the Legislature amended the Subdivision Map Act to provide that the expiration date of any tentative or vesting tentative map, or parcel map for which a tentative or vesting tentative map has been approved, that was in existence on July 15, 2009, and will not expire before January 1, 2012, has been extended by 24 months, as has any legislative, administrative, or other state agency approval pertaining to a development project included in the map [Gov. Code § 66452.22(a), (c)]. See Ch. 579, *Zoning and Planning*, § 579.267[9].

TRIAL

Juror's Silence During Polling Does Not Constitute Disagreement. In *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal. 4th 247, the California Supreme Court held that a juror's silence at polling, due to the trial court's failure to poll the juror on one of multiple special verdict questions, does not constitute an expressed disagreement with the verdict under Code Civ. Proc. § 618. See Ch. 326A, *Jury Verdicts*, § 326A.14[3].

TORTS

Animal Liability. This chapter is updated with *McMahon v. Craig* (2009) 176 Cal. App. 4th 222, which holds a pet owner may not recover for loss of the companionship of a pet, nor for negligent or intentional infliction of emotional distress based on veterinary malpractice that is not outrageous. See Ch. 23, *Animals: Civil Liability*, § 23.15[2].

Accrual Rule of Code Civ. Proc. § 340.1 May Be Applied to Action Against Public Entity. In *K.J. v. Arcadia Unified School Dist.* (2009) 172 Cal. App. 4th 1229, the court of appeal held that although the childhood sexual abuse limitations period of Code Civ. Proc. § 340.1 does not apply to actions against public entities, the language in that statute suggesting that in delayed discovery cases the cause of action accrues on the date that the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after plaintiff reached the age of majority was caused by childhood sexual abuse, can be used to determine the accrual date in an action against a public entity defendant when application of a delayed discovery rule is appropriate. See Ch. 5, *Abuse of Minors and Elderly*, § 5.13.

Specific Intent Required to Impose Battery Liability on Doctor Who Fails to Abide by Condition. In *Dennis v. Southard* (2009) 174 Cal. App. 4th 540, the court of appeal held that to be liable for performing a medical procedure while failing to abide by a known condition imposed by the patient, the doctor must have intended to perform the procedure without abiding by the condition and a negligent failure to abide by the condition is an insufficient basis for liability for battery. See Ch. 58, *Assault and Battery*, § 58.14[5], and Ch. 415, *Physicians: Medi-*

cal Malpractice, § 415.20.

Attorney Not Liable to Beneficiary for Failing to Modify Trust Before Decedent's Death. In *Chang v. Lederman* (2009) 172 Cal. App. 4th 67, the court of appeal held that an estate trust beneficiary could not state a claim against the testator's attorney based on the attorney's failure to modify the trust to increase the beneficiary's bequest, allegedly in accordance with the decedent's wishes, as the requested change was not memorialized in a written document. See Ch. 76, *Attorney Professional Liability*, § 76.200[3][b][ii].

Interest Under Civ. Code § 3291 Imposed Only Once Under Code Civ. Proc. § 998. In *Caldo v. Metalclad Insulation Corp.* (2009) 172 Cal. App. 4th 1040, the court of appeal held that when multiple defendants are found liable at trial and each rejected a Code Civ. Proc. § 998 settlement offer that was less than the judgment ultimately imposed against him or her, the 10 percent prejudgment interest award is imposed only once on the entire judgment under Civ. Code § 3291 and is not imposed separately against each defendant on the full amount of the total judgment. See Ch. 86, *Automobiles: Pretrial Motions and Settlement Negotiations*, § 86.12[2][b].

Hospital Lien Act Ineffective to Create Lien Against Recovery From Victim's Own Insurer. In *Weston Reid, LLC v. American Ins. Group, Inc.* (2009) 174 Cal. App. 4th 940, the court of appeal held that the Hospital Lien Act, Civ. Code § 3045.1 et seq., does not provide for creation of a lien against recovery from the victim's own first-party insurer, even if the victim's recovery from his or her own insurer is under an uninsured motorist coverage that substitutes for recovery from a third-party tortfeasor who does not carry appropriate in-

surance coverage. See Ch. 177, *Damages*, § 177.54[3].

Willed-Body Program Not Liable for Mishandling of Corpse Based Merely on General Pattern of Mishandling Corpses. In *Conroy v. Regents of University of California* (2009) 45 Cal. 4th 1244, the California Supreme Court held that evidence of a general pattern of mishandling of donated bodies by a willed-body program will not support liability for negligence absent evidence demonstrating to a "well-founded substantial certainty" that the body of plaintiff's decedent was actually mishandled. See Ch. 180, *Dead Bodies and Cemeteries*, § 180.14[4], and Ch. 362, *Mental Suffering and Emotional Distress*, § 362.11[4].

Application of Statute of Limitations in Action Against Decedent Clarified. In *Farb v. Superior Court* (2009) 174 Cal. App. 4th 678, the court of appeal held that the limitations period of Code Civ. Proc. § 366.2, which governs claims against a decedent's estate, applies to a claim filed in California even if the decedent's personal representative resides outside of California or the estate is in probate in another state. The court also held that the limitations period is not tolled while the plaintiff is a minor. See Ch. 181, *Death and Survival Actions*, § 181.44[2].

Injury Caused by Former Employer After Termination Not Attributable to Employer. In *Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal. App. 4th 1133, the court of appeal held that because the employer-employee relationship ends on the termination of employment, an employer cannot be held liable for the negligent hiring and retention of an unfit employee for harm inflicted by the employee after his or her employment has been ter-

minated, even if the former employee initially met the plaintiff while working for the employer. See Ch. 248, *Employer's Liability for Employee's Torts*, § 248.12[2].

Emergency Vehicles. Under Veh. Code § 17001, it is not sufficient that a motor vehicle somehow be involved in the series of events that results in the injury; instead, the vehicle must be in a state of being at work or in the exercise of some specific function by performing work or producing effects at the time and place the injury is inflicted. Accordingly, where police shot and killed a suspect well after a police vehicular pursuit concluded (after the police stopped and exited their cars and chased the suspect on foot), neither the individual officers nor the public entity may be held civilly liable for the suspect's death based on the manner in which the officers conducted the vehicular pursuit [*Hernandez v. City of Pomona* (2009) 46 Cal. 4th 501]. See Ch. 246, *Emergency Vehicles*, § 246.12[1].

Fire Protection Services. In a case in which the Department of Forestry and Fire Protection sought to recover its costs in fighting a brush fire from real parties in interest, the affirmative defenses of comparative negligence or failure to mitigate damages were not available to real parties; real parties were not allowed to challenge the reasonableness of the methods the Department used (or did not use) to fight the fire [*People ex rel. Grijalva v. Superior Court* (2008) 159 Cal. App. 4th 1072]. See Ch. 267, *Fires*, § 267.16[4].

Psychiatrist Not Liable for Patient's Murder of His Neighbors. In *Greenberg v. Superior Court* (2009) 172 Cal. App. 4th 1339, the court of appeal held that a psychiatrist owed no duty of care to the neighbors of a patient when the patient shot and killed two of the neighbors' family mem-

bers, despite plaintiffs' contentions that the psychiatrist's negligent prescription of drugs to the patient caused him to become violent and caused the shooting. See Ch. 304, *Insane and Other Incompetent Persons*, § 304.93[2].

Third-Party Administrator Owes Duty to Health Plan Members When Administering Claims. In *Mintz v. Blue Cross of California* (2009) 172 Cal. App. 4th 1594, the court of appeal held that a corporation under contract to a health plan to administer claims owes a duty to health plan members to exercise due care to protect those members from physical injury caused by negligence in denying benefits under the plan. The court also held that only a "stranger to the contract" may be liable for interference with that contract, and an agent for a contracting principal, including a corporate agent or employee, cannot be liable for interfering with the principal's contract with the plaintiff if the alleged interference was committed when the agent was acting in the scope of the agency. See Ch. 380, *Negligence*, § 380.31[3], and Ch. 565, *Unfair Competition*, § 565.133[2][a].

Power Company Not Liable for Electrocution. In *Manuel v. Pacific Gas & Electric Co.* (2009) 173 Cal. App. 4th 927, the court of appeal held that an electric utility company that placed anticlimbing guards on an electric tower, even if they were installed incorrectly, did not engage in willful misconduct such that the company could be liable when a teenager was electrocuted when she climbed the tower. See Ch. 421, *Premises Liability*, § 421.23[3].

Republication of Material Plaintiff Posted on Internet Not Actionable as Public Disclosure of Private Facts. In *Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal. App. 4th 1125, the court of appeal held that the unauthorized republication in

a newspaper of an article plaintiff had written and posted on the highly popular Internet site MySpace.com was not an actionable public disclosure of private facts, as plaintiff herself made the information available to any person with a computer. See Ch. 429, *Privacy*, § 429.37[1].

Workplace Privacy. In *Hernandez v. Hillsides, Inc.* (2009) 47 Cal. 4th 272, the California Supreme Court held that an employer's clandestine videotaping of a computer workstation during non-business hours to determine the identity of a person who was using the computer to access pornographic websites during non-business hours was not considered so highly offensive that it would support causes of action for intrusion based upon state common law and Cal. Const., art. 1, § 1. See Ch. 429, *Privacy*, § 429.39.

UNFAIR COMPETITION

Requirements for Showing Standing in Unfair Competition Class Action Clarified. In *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, the California Supreme Court held that when pursuing a class action under the unfair competition statute, Bus. & Prof. Code § 17200 et seq., only the class representative plaintiffs must demonstrate that they meet the statutory requirements for standing to bring the action. The Court also held that if the unfair competition claim is based on fraud stemming from alleged false advertising and misrepresentations made to consumers, the plaintiff must plead and prove actual reliance to satisfy the standing requirement, although the plaintiff is not required to necessarily plead and prove individualized reliance on specific misrepresentations or false statements when those misrepresentations and false statements were part of an extensive and long-term advertising campaign. See Ch. 565, *Unfair Competition*, § 565.35[1].

Precertification Discovery May Be Allowed in Unfair Competition Class Action. In *Safeco Ins. Co. of America v. Superior Court* (2009) 173 Cal. App. 4th 814, the court of appeal held that when a class action is brought under the unfair competition statute, a plaintiff who is not a class member or is otherwise unqualified to serve as a class representative may, in appropriate cases, move for precertification discovery for the purposes of identifying a proper class representative, although the absence of a reasonable, good-faith belief that the plaintiff had standing under the law in effect at the time the plaintiff was first named as a plaintiff will ordinarily compel denial of a motion for precertification discovery. See Ch. 565, *Unfair Competition*, § 565.35[1].

Pudding Manufacturer Adequately Described Alleged Trade Secrets. In *Brescia v. Angelin* (2009) 172 Cal. App. 4th 133, the court of appeal held that a plaintiff alleging misappropriation of an allegedly distinct high-protein pudding formula and manufacturing process sufficiently described the claimed trade secret when listing the specific ingredients by common name, as well as by their supplier and brand name, and listing the percentage each ingredient comprised of the total formula. Plaintiff also particularly described each step in the mixing, testing, and code marking of the pudding. See Ch. 565, *Unfair Competition*, § 565.103[8].

Cause of Action for Negligent Interference With Existing Contract Rejected. In *Davis v. Nadrich* (2009) 174 Cal. App. 4th 1, the court of appeal held that because the California Supreme Court case holding that there is no cause of action for negligent interference with a contract has never been overruled, they were bound to conclude that the cause of action still does not exist.

in California. See Ch. 565, *Unfair Competition*, § 565.135[2].

WORKERS' COMPENSATION

Qualified Medical Evaluators. In amending 8 Cal. Code Reg. §§ 30-49.9–49.9, the Administrative Director has updated the regulations governing qualified medical evaluators. See Ch. 577, *Workers' Compensation*, § 577.46[3][a]–[p].

Employment RelationshipsIndependent Contractors. The court of appeal in *Cristler v. Express Messenger Systems* (2009) 171 Cal. App. 4th 72 has held that the plaintiffs, representatives of a class of parcel and message drivers/deliverers, were independent contractors, not the defendant's employees, and that the trial court's jury instructions properly placed the burden on the defendant of rebutting the Lab. Code § 3357 presumption that the plaintiffs were the defendant's employees. See Ch. 577, *Workers' Compensation*, § 577.22[3][c].

Permanent Disability—AMA Guides—2005 Permanent Disability Rating Schedule. The Appeals Board en banc in *Almaraz v. Environmental Recovery Services; Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 201 (Appeals Board en banc opinion) has held that the AMA *Guides* portion of the 2005 Permanent Disability Rating Schedule is rebuttable, and that it is rebutted by showing that an impairment rating based on the *Guides* would result in a permanent disability award that would be inequitable, disproportionate, and not a fair and accurate measure of the employee's permanent disability. Subsequently, the Board granted reconsideration in these joint cases. See Ch. 577, *Workers' Compensation*, § 577.01.

Permanent Disability—2005 Permanent Disability Rating Schedule—Diminished Future Earning Capacity. The Appeals Board en banc in *Ogilvie v.*

City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) has held that the diminished future earning capacity portion of the 2005 Permanent Disability Rating Schedule is rebuttable, since Lab. Code § 4660(c) provides that the 2005 Schedule is merely “*prima facie* evidence of the percentage of permanent disability to be attributed to each injury.” Subsequently, the Board granted reconsideration in this case. See Ch. 577, *Workers' Compensation*, § 577.01.

Permanent Disability—Offers of Modified of Alternative Work. The court of appeal in *Bontempo v. Workers' Comp. Appeals Bd.* (2009) 173 Cal. App. 4th 689 has held that in the pretrial conference statement the parties stipulated that the permanent disability benefits that the employer was already paying to the employee included a 15 percent increase pursuant to Lab. Code § 4658(d), and that, by checking the boxes on the pretrial conference form labeled “Permanent Disability” and “Apportionment,” the parties conveyed their intention that the WCJ calculate the award for permanent disability benefits under the applicable formula and the facts presented, including Lab. Code § 4658(d). See Ch. 577, *Workers' Compensation*, § 577.45[4][a].

Vocational Rehabilitation—Sunsetting. The Appeals Board en banc has held in *Weiner v. Ralphs Co.* (2009) 74 Cal. Comp. Cases 736 (Appeals Board en banc opinion) that: (1) repeal of Lab. Code § 139.5 terminated any rights to vocational rehabilitation benefits or services pursuant to orders or awards that were not final before January 1, 2009; (2) no saving clause was adopted to protect vocational rehabilitation rights in cases still pending on or after January 1, 2009; (3) vocational rehabilitation statutes that were repealed in

2003 do not continue to function as “ghost statutes” on or after January 1, 2009; (4) effective January 1, 2009, the WCAB lost jurisdiction over non-vested and inchoate vocational rehabilitation claims, but the WCAB continues to have jurisdiction under Lab. Code §§ 5502(b)(3) and 5803 to enforce or terminate vested rights; and (5) subject matter jurisdiction over non-vested and inchoate vocational rehabilitation claims cannot be conferred by waiver, estoppel, stipulation, or consent. See Ch. 577, *Workers’ Compensation*, § 577.45[2].

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Publication 181 Release 180

November 2009

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| <input type="checkbox"/> | 245-1 thru 245-15 | 245-1 thru 245-15 |
| <input type="checkbox"/> | 246-9 thru 246-12.1 | 246-9 thru 246-12.1 |
| <input type="checkbox"/> | 247-195 | 247-195 |

VOLUME 21

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 248-11 thru 248-12.1 | 248-11 thru 248-12.1 |
| <input type="checkbox"/> | 249-13 thru 249-32.1 | 249-13 thru 249-32.1 |
| <input type="checkbox"/> | 249-71 | 249-71 thru 249-72.1 |
| <input type="checkbox"/> | 249-141 thru 249-142.1 | 249-141 thru 249-142.1 |
| <input type="checkbox"/> | 250-34.1 thru 250-61 | 250-35 thru 250-62.5 |
| <input type="checkbox"/> | 251-13 | 251-13 |
| <input type="checkbox"/> | 254-98.1 thru 254-99 | 254-99 thru 254-100.1 |
| <input type="checkbox"/> | 254-193 | 254-193 |
| <input type="checkbox"/> | 254-301 | 254-301 |

VOLUME 22

Revision

| | | |
|--------------------------|--------------------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 256-11 thru 256-17 | 256-11 thru 256-17 |
| <input type="checkbox"/> | 267-11 thru 267-20.1 | 267-11 thru 267-19 |
| <input type="checkbox"/> | 267-37 thru 267-39 | 267-37 thru 267-39 |
| <input type="checkbox"/> | 267-51 | 267-51 |

VOLUME 23

Revision

| | | |
|--------------------------|--------------------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 269-51 thru 269-53 | 269-51 thru 269-53 |
| <input type="checkbox"/> | 269-62.1 thru 269-65 | 269-63 thru 269-65 |

VOLUME 25

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 293-133 thru 293-153 | 293-133 thru 293-153 |
| <input type="checkbox"/> | 294-1 thru 294-13 | 294-1 thru 294-13 |
| <input type="checkbox"/> | 294-23 thru 294-25 | 294-23 thru 294-26.1 |
| <input type="checkbox"/> | 294-35 thru 294-41 | 294-35 thru 294-41 |

| <u>Check As Done</u> | <u>Remove Old Pages Numbered</u> | <u>Insert New Pages Numbered</u> |
|------------------------------|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> | 294-51 | 294-51 |
| <input type="checkbox"/> | 300-45 thru 300-57 | 300-45 thru 300-57 |
| <input type="checkbox"/> | 300-89 | 300-89 |
| <input type="checkbox"/> | 302-27 | 302-27 thru 302-28.1 |

VOLUME 26

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 304-97 thru 304-98.1 | 304-97 thru 304-98.1 |
| <input type="checkbox"/> | 304-117 thru 304-118.1 | 304-117 thru 304-118.1 |
| <input type="checkbox"/> | 308-10.1 thru 308-13 | 308-11 thru 308-13 |
| <input type="checkbox"/> | 308-87 | 308-87 |
| <input type="checkbox"/> | 308-145 thru 308-147 | 308-145 thru 308-147 |
| <input type="checkbox"/> | 308-211 thru 308-213 | 308-211 thru 308-214.1 |
| <input type="checkbox"/> | 308-227 thru 308-228.1 | 308-227 thru 308-228.1 |
| <input type="checkbox"/> | 308-239 thru 308-242.1 | 308-239 thru 308-242.1 |
| <input type="checkbox"/> | 308-259 thru 308-261 | 308-259 thru 308-262.1 |

VOLUME 27

Revision

| | | |
|--------------------------|------------------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 318-61 | 318-61 |
| <input type="checkbox"/> | 321-35 thru 321-37 | 321-35 thru 321-37 |

VOLUME 28

Revision

| | | |
|--------------------------|------------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 323-124.1 thru 323-128.1 | 323-125 thru 323-128.1 |
| <input type="checkbox"/> | 326A-15 thru 326A-16.1. | 326A-15 |
| <input type="checkbox"/> | 326A-35 | 326A-35 thru 326A-36.1 |

VOLUME 29

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 332-47 | 332-47 thru 332-48.1 |
| <input type="checkbox"/> | 332-113 thru 332-118.5 | 332-113 thru 332-118.5 |
| <input type="checkbox"/> | 335-32.1 thru 335-33 | 335-33 thru 335-34.1 |

VOLUME 30

| <u>Check As Done</u> | <u>Remove Old Pages Numbered</u> | <u>Insert New Pages Numbered</u> |
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Revision

| | | |
|--------------------------|--------------------------------------|----------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 340-139 thru 340-145 | 340-139 thru 340-145 |
| <input type="checkbox"/> | 342-43 thru 342-44.1 | 342-43 |
| <input type="checkbox"/> | 345-8.1. | 345-8.1 |
| <input type="checkbox"/> | 345-21 | 345-21 thru 345-22.1 |
| <input type="checkbox"/> | 345-53 | 345-53 |
| <input type="checkbox"/> | 345-115 thru 345-116.1 | 345-115 thru 345-116.1 |
| <input type="checkbox"/> | 345APP-11 thru 345APP-18.1 | 345APP-11 thru 345APP-18.1 |
| <input type="checkbox"/> | 345APP-31 thru 345APP-36.1 | 345APP-31 thru 345APP-36.1 |
| <input type="checkbox"/> | 345APP-47 thru 345APP-53 | 345APP-47 thru 345APP-54.1 |

VOLUME 31

Revision

| | | |
|--------------------------|----------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 348-10.1 thru 348-12.1 | 348-11 thru 348-12.1 |
| <input type="checkbox"/> | 349-5 thru 349-7 | 349-5 thru 349-7 |
| <input type="checkbox"/> | 349-32.1 thru 349-33 | 349-33 thru 349-34.1 |
| <input type="checkbox"/> | 349-67 | 349-67 thru 349-68.1 |
| <input type="checkbox"/> | 350-1 thru 350-11 | 350-1 thru 350-12.3 |
| <input type="checkbox"/> | 356-1 thru 356-22.1 | 356-1 thru 356-19 |

VOLUME 32

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 359-1. | 359-1 |
| <input type="checkbox"/> | 359-19 thru 359-22.1 | 359-19 thru 359-22.1 |
| <input type="checkbox"/> | 361-23 thru 361-28.1 | 361-23 thru 361-28.1 |
| <input type="checkbox"/> | 361-69 thru 361-72.1 | 361-69 thru 361-71 |
| <input type="checkbox"/> | 361-91 | 361-91 |
| <input type="checkbox"/> | 361-205 thru 361-207 | 361-205 thru 361-207 |
| <input type="checkbox"/> | 362-23 thru 362-27 | 362-23 thru 362-27 |
| <input type="checkbox"/> | 362-57 | 362-57 thru 362-58.1 |
| <input type="checkbox"/> | 370-7 thru 370-13. | 370-7 thru 370-13 |

VOLUME 33

Revision

| | | |
|--------------------------|--------------------------------|--------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 371-43 | 371-43 |
| <input type="checkbox"/> | 371-72.1 thru 371-77 | 371-73 thru 371-77 |

| <u>Check As Done</u> | <u>Remove Old Pages Numbered</u> | <u>Insert New Pages Numbered</u> |
|------------------------------|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> | 376-17 | 376-17 thru 376-18.1 |
| <input type="checkbox"/> | 376-32.1 thru 376-47 | 376-33 thru 376-48.1 |
| <input type="checkbox"/> | 380-29 thru 380-37 | 380-29 thru 380-37 |
| <input type="checkbox"/> | 380-51 thru 380-53 | 380-51 thru 380-53 |
| <input type="checkbox"/> | 380-173 | 380-173 |
| <input type="checkbox"/> | 385-157 thru 385-163 | 385-157 thru 385-163 |

VOLUME 36

Revision

| | | |
|--------------------------|--------------------------------|-------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 415-43 thru 415-45 | 415-43 thru 415-45 |
| <input type="checkbox"/> | 418-25 thru 418-28.1 | 418-25 thru 418-28.1 |
| <input type="checkbox"/> | 418-89 thru 418-90.3 | 418-89 thru 418-90.4(1) |
| <input type="checkbox"/> | 421-45 thru 421-48.1 | 421-45 thru 421-47 |

VOLUME 37

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 429-47 thru 429-55 | 429-47 thru 429-55 |
| <input type="checkbox"/> | 429-78.1 thru 429-81 | 429-79 thru 429-82.1 |

VOLUME 38

Revision

| | | |
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| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 444-31 thru 444-62.1 | 444-31 thru 444-62.1 |

VOLUME 40

Revision

| | | |
|--------------------------|---------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 464-185 | 464-185 thru 464-186.1 |

VOLUME 41

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 470A-37 | 470A-37 |
| <input type="checkbox"/> | 470B-31 thru 470B-33. | 470B-31 thru 470B-33 |
| <input type="checkbox"/> | 470C-33 thru 470C-40.1 | 470C-33 thru 470C-40.1 |

| <u>Check As Done</u> | <u>Remove Old Pages Numbered</u> | <u>Insert New Pages Numbered</u> |
|------------------------------|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> | 470C-55 thru 470C-61. | 470C-55 thru 470C-62.1 |
| <input type="checkbox"/> | 470C-91 | 470C-91 thru 470C-92.1 |

VOLUME 41A

Revision

| | | |
|--------------------------|------------------------------------|--------------------------|
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| <input type="checkbox"/> | 473E-30.5 | 473E-30.5 |
| <input type="checkbox"/> | 473F-55 thru 473F-61 | 473F-55 thru 473F-62.3 |
| <input type="checkbox"/> | 473F-77 | 473F-77 thru 473F-78.1 |
| <input type="checkbox"/> | 473G-43 thru 473G-45 | 473G-43 thru 473G-45 |
| <input type="checkbox"/> | 473G-55 | 473G-55 thru 473G-56.1 |
| <input type="checkbox"/> | 474-15 | 474-15 thru 474-16.1 |
| <input type="checkbox"/> | 474A-23 thru 474A-26.1. | 474A-23 thru 474A-26.3 |
| <input type="checkbox"/> | 474A-38.1 thru 474A-40.9. | 474A-39 thru 474A-40.27 |
| <input type="checkbox"/> | 474B-17 | 474B-17 thru 474B-18.1 |
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| <input type="checkbox"/> | 474C-20.1 thru 474C-20.3 | 474C-20.1 thru 474C-20.3 |

VOLUME 42

Revision

| | | |
|--------------------------|------------------------------|----------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 484-1 thru 484-9 | 484-1 thru 484-9 |
| <input type="checkbox"/> | 484-23 | 484-23 thru 484-24.1 |
| <input type="checkbox"/> | 484-37 thru 484-41 | 484-37 thru 484-41 |

VOLUME 43

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 489-41 thru 489-45 | 489-41 thru 489-45 |
| <input type="checkbox"/> | 489-97 thru 489-101. | 489-97 thru 489-101 |
| <input type="checkbox"/> | 489-199 thru 489-200.1 | 489-199 thru 489-200.1 |
| <input type="checkbox"/> | 491-30.1 thru 491-37 | 491-31 thru 491-37 |
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VOLUME 44

Revision

| | | |
|--------------------------|------------------------------|---------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 504-27 thru 504-29 | 504-27 thru 504-29 |
| <input type="checkbox"/> | 511-1 thru 511-9 | 511-1 thru 511-10.3 |

**Check
As
Done**

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

VOLUME 45

Revision

| | | |
|--------------------------|----------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 512-35 thru 512-44.1 | 512-35 thru 512-43 |
| <input type="checkbox"/> | 512-55 | 512-55 |
| <input type="checkbox"/> | 512-67 thru 512-69 | 512-67 thru 512-69 |
| <input type="checkbox"/> | 513-16.1 thru 513-26.1 | 513-17 thru 513-26.1 |
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| <input type="checkbox"/> | 515-75 | 515-75 thru 515-76.1 |
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| <input type="checkbox"/> | 518-95 | 518-95 thru 518-96.1 |

VOLUME 46

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
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| <input type="checkbox"/> | 531-21 thru 531-24.1 | 531-21 thru 531-24.1 |
| <input type="checkbox"/> | 531-73 thru 531-75 | 531-73 thru 531-75 |
| <input type="checkbox"/> | 535-3 thru 535-5 | 535-3 thru 535-6.1 |
| <input type="checkbox"/> | 535-19 thru 535-21 | 535-19 thru 535-21 |
| <input type="checkbox"/> | 535-39 | 535-39 thru 535-40.1 |
| <input type="checkbox"/> | 535-49 thru 535-53 | 535-49 thru 535-53 |
| <input type="checkbox"/> | 535-67 thru 535-71 | 535-67 thru 535-71 |

VOLUME 47

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
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| <input type="checkbox"/> | 537-80.1 thru 537-85 | 537-81 thru 537-86.1 |
| <input type="checkbox"/> | 538-25 thru 538-33 | 538-25 thru 538-33 |
| <input type="checkbox"/> | 538-69 thru 538-77 | 538-69 thru 538-77 |
| <input type="checkbox"/> | 544-17 | 544-17 |

VOLUME 48

| <u>Check As Done</u> | <u>Remove Old Pages Numbered</u> | <u>Insert New Pages Numbered</u> |
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Revision

| | | |
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| <input type="checkbox"/> | 549-111 thru 549-115 | 549-111 thru 549-116.1 |
| <input type="checkbox"/> | 553-7 thru 553-9 | 553-7 thru 553-9 |
| <input type="checkbox"/> | 555-112.1 thru 555-112.3 | 555-112.1 thru 555-112.3 |

VOLUME 49

Revision

| | | |
|--------------------------|------------------------------------|------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 560-47 thru 560-48.1 | 560-47 thru 560-48.1 |
| <input type="checkbox"/> | 560-207 thru 560-210.1 | 560-207 thru 560-210.1 |
| <input type="checkbox"/> | 564-135 thru 564-141 | 564-135 thru 564-139 |
| <input type="checkbox"/> | 565-33 thru 565-36.3 | 565-33 thru 565-36.3 |
| <input type="checkbox"/> | 565-108.1 thru 565-110.1 | 565-109 thru 565-110.1 |
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| <input type="checkbox"/> | 565-207 thru 565-209 | 565-207 thru 565-209 |

VOLUME 50

Revision

| | | |
|--------------------------|--------------------------------|----------------------|
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| <input type="checkbox"/> | 568-15 | 568-15 |
| <input type="checkbox"/> | 568-25 | 568-25 |
| <input type="checkbox"/> | 568-53 thru 568-55 | 568-53 thru 568-55 |
| <input type="checkbox"/> | 569-77 | 569-77 |
| <input type="checkbox"/> | 569-179 thru 569-183 | 569-179 thru 569-183 |
| <input type="checkbox"/> | 571-68.1 thru 571-69 | 571-69 thru 571-70.1 |

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Revision

| | | |
|--------------------------|---|-------------------------------|
| <input type="checkbox"/> | Title page. | Title page |
| <input type="checkbox"/> | 573-5 thru 573-10.1 | 573-5 thru 573-10.1 |
| <input type="checkbox"/> | 577-7. | 577-7 thru 577-8.1 |
| <input type="checkbox"/> | 577-49 thru 577-50.1 | 577-49 thru 577-50.1 |
| <input type="checkbox"/> | 577-69 thru 577-71 | 577-69 thru 577-71 |
| <input type="checkbox"/> | 577-89 thru 577-90.2(1) | 577-89 thru 577-90.2(1) |
| <input type="checkbox"/> | 577-132.9. | 577-132.9 thru 577-132.10(1) |
| <input type="checkbox"/> | 577-132.19 | 577-132.19 thru 577-132.20(1) |
| <input type="checkbox"/> | 577-132.28(1) thru 577-132.41 | 577-132.29 thru 577-132.57 |
| <input type="checkbox"/> | 577-210.17 thru 577-211. | 577-211 thru 577-212.1 |
| <input type="checkbox"/> | 577-289 thru 577-291 | 577-289 thru 577-291 |

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|------------------------------|--------------------------------------|--------------------------------------|
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| <input type="checkbox"/> | 577-337 | 577-337 |
| <input type="checkbox"/> | 577-355 thru 577-356.1 | 577-355 thru 577-356.1 |
| <input type="checkbox"/> | 577-372.1 thru 577-378.1 | 577-373 thru 577-378.7 |
| <input type="checkbox"/> | 579-147 | 579-147 |
| <input type="checkbox"/> | 579-165 | 579-165 thru 579-166.1 |
| <input type="checkbox"/> | 579-189 thru 579-192.1 | 579-189 thru 579-192.1 |

VOLUME 52

Revision

| | | |
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| <input type="checkbox"/> | Title page. | Title page |
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| <input type="checkbox"/> | I-483 thru I-489. | I-483 thru I-489 |
| <input type="checkbox"/> | I-545 thru I-551. | I-545 thru I-552.1 |

VOLUME 53

Revision

| | | |
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| <input type="checkbox"/> | I-901 thru I-947. | I-901 thru I-948.1 |
| <input type="checkbox"/> | I-1087 thru I-1095. | I-1087 thru I-1096.1 |
| <input type="checkbox"/> | I-1243 thru I-1249. | I-1243 thru I-1250.1 |
| <input type="checkbox"/> | I-1417 thru I-1513. | I-1417 thru I-1515 |

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