JANUARY 2022 NEWSLETTER

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a law firm founded on
the principle of service.

CHOOSE *YOUR* OWN ADVENTURE

This is a common theme throughout our practice here at PLPC. On any given day you may be requested to assist on a Public Administration Case, a dog bite, marijuana code enforcement, litigation, or any range of assignments that our clients need completed. The photo in the News section on page 4, is of two of our valued employees who were asked to join on a foray into the land of Public Administration where they had the pleasure of sorting through a decedents residence and car to search for estate valuables, wills, bills, etc. which will assist us in locating heirs and ultimately disposing of the estate assets to the appropriate people.

We have also used this phrase as it refers to the ongoing COVID-19 Response. One day CDC says masks for everyone, cloth is okay, the next day it is masks for non-vaccinated, or those showing symptoms, the next it is no cloth masks, only N95's, and by the way if you are vaccinated and exposed but not showing symptoms, come on in to work! Our HR professionals and their hard-working employees across the state have been on an adventure that has lasted nearly 2 years at this time. We don't see this changing very soon, particularly with the recent SCOTUS decision (which you can read about in our Blog) so we appreciate that our clients can continue to roll with the punches no matter what road they are on.

In addition to our average work tasks the new year, for many, brings another type of choose your own adventure by way of those New Year's Resolutions. Whether it be trying Keto or a Mediterranean diet, cutting out soda or alcohol, vowing to work-out 5 days a week, or resolving to change nothing at all, each new year we tend to reflect on what we want our adventure to be for the next 12 months. As always, PLPC is ready willing and able to assist you whatever your needs are and in whichever adventure you choose!

COVID-19 Discipline

By: Margaret Long, Partner

What should a jurisdiction do if their employees refuse to follow the mandates and policies surrounding COVID-19, including a mandatory vaccination policy? While the answer is still not certain, the recent case of *Firefighters4Freedom Foundation v. City of Los Angeles*, Case No. 21STCV34490 (Super. Ct. Cal. Dec. 21, 2021) gives us good insight into the level of employee disciplinary actions allowed for failure to comply with mandatory vaccination and testing policies.

On August 18, 2021, the Los Angeles City Council adopted an ordinance requiring all current and future City of Los Angeles ("City") employees to be fully vaccinated against COVID-19 by October 19, 2021, or request an exemption to the vaccine mandate based on religious belief or medical condition.

On September 24, 2021, the Los Angeles Fire Department ("Department") emailed all employees to notify them to report their vaccination status in compliance with the City's vaccine mandate. On October 14, 2021, the City issued notices to City employees who failed to timely comply with the vaccine requirement, and who were not seeking a medical or religious exemption, to comply by December 18, 2021, if they agreed to certain conditions, including bi-weekly testing at their own expense. Any employees who failed to show proof of vaccination by the new deadline would be subject to corrective action – involuntary separation from City employment, including placement on unpaid leave pending a *Skelly* conference.

In response, the Firefighters4Freedom Foundation ("Foundation") filed a lawsuit against the City and moved for a preliminary injunction to bar the City from terminating or placing any City firefighter on unpaid leave for non-compliance with the City's vaccination mandate. The Foundation argued that the City violated the employees' due process, including the right to a hearing before an impartial hearing officer under the Firefighters Procedural Bill of Rights Act (FBOR).

The Court found for the City on the preliminary injunction. Specifically, the Court found that the Foundation was unlikely to prevail on the merits of its claims at trial. The Court stated that the employees had ample notice of the vaccine mandate and were placed on unpaid leave pending a *Skelly* meeting before their termination. The Court found that this constituted adequate due process, particularly given the emergency COVID-19 created.

The Court also found that the Foundation could not present sufficient evidence that the City Council abused its discretion in passing the vaccination mandate. The Foundation alleged that the City did not have sufficient evidence to declare a state of emergency due to COVID-19. The Court disagreed, citing in part evidence of how COVID-19 outbreaks in fire stations upend daily life and threaten public safety.

The Foundation failed to show a violation of the unvaccinated firefighters' privacy rights. Supervening public concerns – namely, the City's goal to protect the City's workforce and the public it serves from COVID-19 – clearly outweighed the firefighters' privacy rights. The Court also noted that none of the Foundation-represented firefighters had sought a religious or medical exemption.

Finally, the Court acknowledged that while individual firefighters who were on unpaid leave incurred a "severe harm," the COVID-19 deaths significantly outweighed that monetary loss. The trial court acknowledged that there have been a large number of COVID-19 cases and deaths in the City.

Important takeaways that this case provides us as we look to enforce COVID-19 policies, include:

1. Make sure you give employees adequate notice of any new mandates or policies;
2. Paid administrative leave is acceptable regarding mandatory masking, testing and vaccine policies, if a severe harm can be shown;
3. A *Skelly* hearing should be offered prior to the actual termination;
4. The "Privacy Rights" argument is not strong, as the need to get testing and wearing a mask outweighs the desire for employees to keep their vaccine status private.

If you have any questions regarding COVID-19 policies or disciplinary actions, please do not hesitate to contact *Prentice*|Long, PC.

Preserving Public Spaces in Light of a Nationwide Homelessness Crisis

By Kelsey Walsh, Associate

The Eighth Amendment to the United States Constitution prohibits "excessive fines" and "cruel punishments" against its citizens.

A fine must be excessive, and at least partially punitive, in order to trigger Eighth Amendment scrutiny. An excessive fine is one that is disproportionate to the offense. The Eighth Amendment requires a court to inquire into a person's actual ability to pay a municipal fine. A recent Washington Supreme Court decision, *City of Seattle v. Long*, concluded that $547.12 in impound fees, associated with Long's parking infraction, were disproportionate to a "not particularly egregious" parking infraction. An investigation into Long's ability to pay revealed that he lived out of his truck, which was towed, putting him out on the street. His monthly income fluctuated between $400 to $700, and he only had $50 saved. The Washington court found Long had a lack of ability to pay the disproportionate impound fees under his particular circumstances.

A similar decision was made in the Ninth Circuit's 2019 *Martin v. City of Boise* decision, prohibiting

the City from enforcing its ban on camping on public land when other shelter is available. This decision demonstrates the court's reluctance to punish the status of homelessness.

While these cases are not binding in California, they illustrate the court's reluctance on penalizing homelessness as a status. The question remains the same, how do we combat homelessness and preserve public spaces for their intended purpose? With homelessness on the rise and people's inability to pay the fines, how do we solve the problem when there seems to be no accountability? This incredibly contentious topic will recur until a solution, which serves the public as a whole, can be reached.

SPOTLIGHT - Ben Ramsey, ATTORNEY

In late 2021, *Prentice*|Long, PC was pleased to welcome seasoned attorney Ben Ramsey. A Sacramento County native, the majority of Mr. Ramsey's practice has been in the Sacramento area, however Mr. Ramsey boasts extensive experience in Plumas, Lassen and Modoc Counties. While Mr. Ramsey's career practice has focused on Family Law, criminal, dependency, guardianship and conservatorship law, he has also assisted in representing public agencies, parents, and minors on all sides of the issues. Confirming his impact on the local communities he works in, Mr. Ramsey received the 2015 Community Impact Award from the Lassen Family Services Staff and Court Appointed Special Advocates.

Prior to joining the Firm, Mr. Ramsey was a sole practitioner for over ten years. From 2006 to 2012, Mr. Ramsey was employed as an Associate Attorney with the law offices of Paul Brimberry, Certified Family Law Specialist, in Sacramento, California. From 2001 to 2006, Mr. Ramsey cultivated the firm Ramsey & Ramsey, with his father Joe Ramsey. In his free time, he enjoys working with dogs through animal rescue programs and loves a good nautical mystery.

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The Beneficial Parent-Child Relationship Exception Gets a Boost – *In re Caden C.*

By P.J. Van Ert, Associate

In any dependency proceeding instituted by a child welfare agency, termination of parental rights and adoption is a possible outcome. One exception to termination is the beneficial parent-child relationship exception (the "exception"), pursuant to Welfare & Institutions ("W&I") code section 366.26(c)(1)(B)(i). After two years of litigation, the California Supreme Court finally weighed in on a case from San Francisco County now known simply as the *In re Caden C.* (2021) 11 Cal.5th 614 decisions In sum, the Supreme Court has made it more difficult for a juvenile court to terminate a parental relationship.

The opinion was unanimous and held that even if a child is found to be adoptable (the preferred permanent plan), the Court may not terminate parental rights if the exception applies. The court reiterated the exception applies when

(1) a parent establishes he or she has regularly visited with the child, and
(2) the child would benefit from continuing the relationship with the parent. The exception also requires
(3) a showing that terminating parental rights would be detrimental to the child.

The court, disapproving of prior opinions, made it clear that no heightened or additional showing is required to establish this exception.

The court further held that the fact that the parent still suffers from issues that led to the dependency is not an absolute bar to the application of the exception. In other words, the parent may not be able to reunify because of continued behaviors that led to dependency, but that does not mean their parental rights will be terminated where the child is adoptable. This includes parents who are not complying with their case plans or maintaining sobriety.

In practice, a request for a bonding study by counsel for the parents signals that the parent wants to try to prove the beneficial parent child relationship exception to adoption. In anticipation of W&I code section 366.26 hearing, following the *In re Caden C.* decision, the agency and social workers need to anticipate more of the facts relevant to the exception. During the *In re Caden C.* case the agency hired its own expert to dispute the findings in a bonding study submitted by mother's counsel.

In the past, the child welfare agency has objected to a last minute bonding study request prior to the W&I code section 366.26 hearing. However, we can expect to see more requests from parents' counsels. In the event the court grants the request and appoints an expert to examine the bond between the parent and dependent child, the agency will want to review its status review reports, and include additional information to meet the exception to show that it does not apply. The agency may also want to hire its own expert to conduct a bonding study. This is an important procedure to preserve adoptions on appeal and minimize any disruption to a child's life should a case be returned for the Court's failure to adequately consider the application of the exception.

Here at PLPC we are prepared to help your agency meet these new hurdles from the California Supreme Court. Please do not hesitate to reach out to us if you have any other questions on these issues.

NEWS

FIRM UPDATE

Prentice|Long, PC is proud to represent Public Administrators throughout California. The Office of the Public Administrator investigates and administers the estates of residents who pass away without a qualified person willing or able to assume this responsibility. *Prentice*|Long, PC has a team of attorneys and administrative staff who work closely with the County staff to fulfill the mandates of the Probate Code. Our dedicated staff sometimes, as seen in the picture of Caren Miller and Kellie Haigh, will even inventory the homes of the decedents. Let us know if we can be of assistance to the Public Administrator in your County.

MORE NEWS

We update our website news section on a monthly basis, click *here* to see what else is going on with *Prentice*|LONG PC.

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