prentice|LONG PC

SUMMER/FALL 2024

NEWSLETTER

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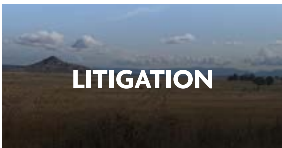

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SUMMER TO FALL

Hard to believe, but the brutal summer weather may be on the wane, making way for a more pleasant Fall season. While the weather was hot, we at PLPC enjoyed a wonderful summer of new opportunities to serve our clients as we continue to grow. An example is the County of San Benito. While the firm has been serving the County of San Benito as County Counsel for just over a year, they have now asked us to increase our presence there, which necessitated the retention of new personnel. We want to welcome Shandell Correa as the firm's newest legal assistant in our new Hollister office. Joining her are two new attorneys, Rebekah Mojica and Irish Tapia who will be primarily assigned to Planning and CPS respectively. All three are phenomenal additions to the PLPC family. And while they are working out of the Hollister office, they will be working on matters for all our of our clients. If you get the chance, say hello to Irish, Rebekah and Shandell.

Our litigation team has also been hard at work, and have been successful in an Anti-SLAPP, Motion to Dismiss, and ICW Appeal recently. Congratulations to Margaret Long, Caitlin Smith, and Scott McLeran on using your legal skills to get our clients out of very complex and potentially expensive cases.

Addressing the Harm of Removal in Detention Hearings

By Carolyn Walker, Associate

SB 578

Senate Bill 578 (SB 578) has emerged as a pivotal piece of legislation aimed at reshaping how California's juvenile courts approach detention hearings under Welfare and Institutions Code (WIC) section 319. Sponsored by the California Judges Association, this bill amended WIC section 319 to ensure that the welfare of children is paramount during the judicial process, particularly when decisions about removal from parent's custody and care are being made.

SB 578 essentially amends WIC 319, specifically adding a finding that the Juvenile Court must make at detention hearings. The bill does not, in fact, alter the criteria for removal of children, which remains based upon a timely assessment of risk to the child, as established in In re CM (2017) 15 Cal. App. 5th 376, 389. Instead, the premise of SB 578 revolves around mitigating potential harm to children after the decision to remove from parent's custody has been made.

One of the key amendments created by SB 578 is the requirement for the court to make several findings based upon the evidence presented by the Department in the "report." This reference to the detention report in the amended section of WIC 319 suggests the legislation now expects a detention report to be filed for the detention hearing, where it once was ambiguous if a detention report was mandatory.

With this amendment, it is suggested that a comprehensive detention report be presented at every detention hearing in dependency court. This report must now include an analysis of and evidence of the following:

1.) Assessment of Harm: Identification of short-term and long-term harms that may arise from removing the child from their parent's care;

2.) Placement Options: Exploration of placement alternatives that would least disrupt the child's life; and

3.) Mitigating Measures: Strategies and interventions that could minimize the disruptive effects of removal and lessen potential harms to the child.

Under SB 578, the court must analyze these factors as outlined in WIC 319(c)(2) at the detention hearing. These guidelines include factors to consider when determining the least disruptive course of action that would effectively mitigate the harm of removal. Factors enumerated in WIC 319(c)(2)(A)(i-iv) provide a structured framework for judicial decision-making, ensuring that all relevant aspects of the child's welfare are carefully evaluated. These factors include: a description of the relationship between the child and their parents, guardians or Indian custodians, based on the child's perspective and the child's response to removal and, where developmentally appropriate, their perspective on removal, the relationship between the child and any siblings, the relationship between the child and other members of the household, any disruption to the child's schooling, social relationships and physical or emotional health that may result from placement out of the home and in the case of an Indian child, and any impact on the child's connection to their tribe, extended family members, and tribal community.

After the court makes the required analysis, SB 578 mandates that the court make explicit findings pursuant to WIC 319(c)(2)(B) during the detention hearing. These findings are crucial as they substantiate the court's determination of the least disruptive placement option available to the child, emphasizing the importance of minimizing any adverse effects resulting from the removal from parent's custody.

In practice, SB 578 necessitates updates to the JV-410 form (Findings and Orders after Hearing). The updated JV-410 form is still pending, and if approved, would be available for use on January 1, 2025. These updates are designed to incorporate the factors outlined in the bill and ensure that judicial findings regarding the least disruptive placement option are accurately recorded during detention hearings.

Senate Bill 578 represents a significant step forward in safeguarding the well-being of children involved in California's juvenile justice system. By emphasizing the importance of minimizing harm during the crucial stage of detention hearings, the bill underscores the judiciary's commitment to making informed, compassionate decisions that prioritize the best interests of vulnerable youth. This law became effective on January 1, 2024. Supporters of the new law anticipate its positive impact in mitigating the adverse effects of parental separation and promoting more supportive outcomes for children in need of protection and care.

CITY OF GRANTS PASS: A Changing Landscape for Public Camping Bans

By Caitlin Smith, Associate

In City of Grants Pass, (*Oregon v. Johnson,*) the United States Supreme Court recently overturned Ninth Circuit precedent (*Martin v. Boise*) holding that cities cannot enforce anti-camping ordinances if they do not have adequate homeless shelter beds available to house the local homeless population.

The Court in Martin held that public camping bans amounted to cruel and unusual punishment under the Eighth Amendment because indigent, homeless individuals have no other options beyond sleeping outdoors or on public property. Many cities have since struggled with how to address the issue of homelessness given the limitations that applied under Martin.

Under this background, a group of individuals experiencing homelessness in Grants Pass, Oregon, sued the city to challenge the constitutionality of its ordinances prohibiting sleeping or camping on public property. The ordinances at issue included fines, progressing to exclusion orders and jail time. This case ultimately wound up before the United States Supreme Court.

The Court's ruling issued sweeping changes to the law. Specifically, the Court held that these types of ordinances do not violate the Eighth Amendment's prohibition against cruel and unusual punishment as applied to people who are involuntarily homeless because the fines and sentences "are not designed to super-ad terror, pain, or disgrace" and instead are the types of punishment that are normally applied to criminal offenses.

The Court further held that these types of ordinances do not punish a person based upon their status as homeless, but instead regulate a person's actions— i.e., sleeping in public in violation of the law. The Court noted that it makes no difference if a person sleeps outside due to homelessness or simply because they are backpacking on vacation.

Going forward, municipalities are now authorized to impose criminal penalties such as fines and even jail time for violating public camping bans. Municipalities should ensure that their laws will survive a subjective reasonableness inquiry, considering circumstances such as time and location-based restrictions. For example, public camping bans in areas that experience high traffic or which are near schools are more likely to be found reasonable. Additionally,

municipalities no longer need to verify that sufficient homeless shelter beds are available before enforcing public camping bans.

It is further recommended that municipalities specify the findings and purposes of public camping bans in any legislation, citing considerations such as public health and safety concerns. Following a similar progressive punishment scheme as the Court upheld in Grants Pass is a safe option. Municipalities should avoid enacting fines that might be found to be excessive and should carefully craft their laws to punish the act of sleeping outside or in public spaces as opposed to a person's status of being unhoused.

In related news, on July 25, 2024, California Governor Gavin Newsom issued Executive Order N-1-24, which directs state agencies on how to remove homeless encampments. Local governments may find this order helpful in determining how to clear encampments. The order advises agencies to conduct site assessments in advance of removal operations to determine whether encampments pose imminent threats to life, health, safety or infrastructure such as would necessitate immediate removal. The order also directs agencies to provide advance notice, where possible, to inhabitants to vacate (at least 48 hours unless exigent circumstances exist), to contact service providers to request outreach services, and to collect, label, and store personal belongings for at least 60 days (unless a safety hazard is posed).

Municipalities should also be on the lookout for upcoming legislation regarding homeless encampments. California Senate Bill 1011, a bipartisan bill, would make it illegal for people experiencing homelessness to form encampments near most public spaces and would prohibit people from sitting, lying, sleeping, or storing, using, maintaining, or placing personal property on streets and sidewalks. Violations could result in misdemeanor charges. Of course, this bill will likely undergo significant changes since the Supreme Court's ruling in Grants Pass.

If your city or county has any questions about the changing landscape of enforcing public camping bans, our office stands ready to guide you through the recent changes.

CHANGES IN CONSERVATORSHIP LAW

By Andrew Plett, Associate

A conservatorship is a legal process in which an individual, called the conservator, is appointed by a court to act and make decisions for another adult, called a conservatee. Most people have likely heard of the process in recent years due to the attention the media has paid to conservatorships involving celebrities like Britney Spears. California law has different types of conservatorships depending on the nature of the conservatee's needs. Due in part to the concerns raised by media reporting on conservatorships and the state's homelessness crisis, the legislature has recently made some significant changes to two types of conservatorships.

AB 1663

Limited Conservatorship & AB 1663

A "limited conservatorship" established under Health and Safety Code section 416 et seq. is reserved for persons who have developmental disabilities. On January 1, 2023, AB 1663 went into effect and made several technical changes to the limited conservatorship process. One of the bill's main features is the implementation of "supported decision making" as a potential less restrictive alternative to traditional limited conservatorship. Under this paradigm, a person with developmental disabilities can enter into a voluntary agreement with one or more trusted individuals who will assist and support the disabled person by helping them obtain and understand information related to a life decision, communicating that decision to others, and ensuring that the disabled person's preferences and decisions are honored. (Welf. & Inst. Code, § 21003.) The goal of supported decision making is to ensure that developmentally disabled persons are able to exercise their rights and autonomy to the maximum extent possible without the need for establishing a restrictive conservatorship.

Another notable change made by AB 1663 is that the order of priorities for appointment of a conservator described in Probate Code section 1812 has been substantially altered. Previously, that statute set forth a fairly ridged framework regarding who could be appointed as a conservator. There was some allowance to permit the conservatee to nominate a preferred individual to serve as their conservator, but that nomination had to be in writing. (Probate Code § 1810.) Now, a conservatee may nominate a potential conservator by stated preference, which can be expressed verbally, by sign language, by alternative or augmentative communication, actions, facial expressions, and other spoken and nonspoken methods of communication. (Prob. Code, § 1812(b)(1).) Furthermore, a qualified person nominated by the conservatee is by statute the first preferred choice for appointment when there are multiple qualified individuals available to serve as conservator. (Id.)

Finally, Probate Code section 1812 also now specifically prohibits a Regional Center from acting as the conservator of a developmentally disabled individual for any conservatorship petition filed after January 1, 2023. (Prob. Code, § 1812(d).) There is a caveat to this prohibition in that a Regional Center may still act as the designee of the Director of the State Department of Developmental Services so long as they are compliant with Health and Safety Code section 416.19. That section allows the Director, if acting as a limited conservator, to designate a Regional Center to perform the Director's duties as limited conservator so long as the designated Regional Center is not the same center responsible for service coordination activities for the conservatee. (Health & Saf. Code, § 416.19(b).) In other words, once a limited conservatorship is established with the Director serving as conservator, the Director can designate Regional Center A to perform the duties of conservator so long as Regional Center B is responsible for service coordination activities for the conservatee.

SB 43

LPS Conservatorship & SB 43

An "LPS conservatorship" established under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) is reserved for persons who are "gravely disabled". Before the passage of SB 43, grave disability was defined as being unable to provide for one's food, clothing, or shelter as a result of a severe mental illness, like schizophrenia, or "chronic alcoholism". On January 1, 2024, SB 43 amended the definition of grave disability to include the inability to provide for one's personal safety or necessary medical care as well as replacing chronic alcoholism with a diagnosis of severe "substance abuse disorder", whether standing alone

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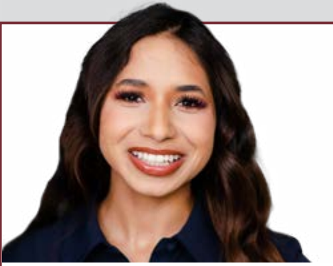

SPOTLIGHT

REBEKAH K. MOJICA

Associate Attorney

Prentice|LONG PC is pleased to welcome Associate Ms. Rebekah Mojica to our team. Ms. Mojica brings her expertise to a diverse range of practice areas, including land use, election law, public works, code updates, environmental law, bail bonds, civil litigation, and dependency law.

Ms. Mojica earned her Associate's degree in Communications from Gavilan College in 2017, while still attending the Dr. TJ Owens Gilroy Early College Academy. She then graduated with Highest Honors from the University of California, Santa Cruz, in 2019, with a Bachelor's degree in Philosophy and a minor in the History of Consciousness. Ms. Mojica received her Juris Doctor from Santa Clara University School of Law in 2023.

Prior to joining *Prentice*|LONG PC, Ms. Mojica practiced in family law and personal injury. She transitioned to municipal and business law to embrace opportunities for broader community impact, tackle new intellectual challenges, and contribute meaningfully to both public and private sectors. In her free time, she loves to spend time outdoors with her Brindle Boxer named Kane, who is always up for a long walk or jog and volunteers at her local church with preschool and elementary-aged children. Ms. Mojica enjoys time with family, cooking up new dishes and traveling—whether it's a quick local getaway or a long-distance adventure.

Please join me in welcoming Ms. Mojica to the family of *Prentice*|LONG PC.

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or co-occurring with severe mental illness. (Welf. & Inst. Code, § 5008(h)(1)(A).) Thus, persons with addictions to substances other than alcohol, such as stimulants like cocaine and methamphetamine, or opioids, can now be conserved under the act if their addictions are severe enough to interfere with their ability to feed, clothe, or house themselves, but also if their addiction prevents them from obtaining medical treatment or provide for their personal safety.

It will be interesting to see how the expanded grave disability definition will impact LPS conservatorship practices in the state going forward. Though the LPS act permitted conservatorships for those suffering from alcoholism, this was rarely ever done and the overwhelming majority of LPS conservatorships were established for persons with mental illness. Two unique features of LPS conservatorships are their short duration (they last for one year but can be renewed if necessary) and the ability of a conservator to have the conservatee placed in a secure (locked) treatment facility. California has an extensive, though severely overburdened, network of secure mental health treatment facilities for the placement and treatment of LPS conservatees with psychiatric conditions; however, it does not have a comparable network of facilities for the treatment of substance abuse disorders, with or without a co-occurring psychiatric condition. It will take some time for such a network to be formed, and so conservatorships for those suffering from substance abuse disorders may yet remain a rarity.

NEWS

Navigating Elected Officials Who Won't Follow the Rules: Insights from the 2024 CSDA Annual Conference

At the 2024 California Special Districts Association (CSDA) Annual Conference, attendees had the opportunity to participate in a session titled "Tools for Navigating Elected Officials Who Won't Follow the Rules," presented by David Prentice, Partner and Carolyn Walker, Associate. Dave (pictured below) and Carolyn's insights were particularly valuable for public officials, administrators, and legal professionals seeking to navigate the often turbulent waters of political misconduct. Their expertise offered attendees not only a framework for handling current challenges but also proactive strategies for fostering a culture of accountability and ethical governance.

MORE NEWS

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