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PRESIDENT’S MESSAGE: A SENSE OF COMMUNITY

By Guillermo “Bert” Partida



It is my distinct honor and privilege to serve as your Ventura County Bar Association President this year. We have a great legal community, and I am proud to be part of it. I have hanging in my office a photo of some of our past bar members – some who I know and others I do not. I imagine they will watch over me this year to ensure I continue the mission of the VCBA and our service to the community. Some of the lawyers are in still in practice today. Some are not, but I have had the pleasure of meeting them while they were still practicing. I really hope to hear from VCBA members regarding the bar and your expectations for VCBA and its leadership. I really hope to meet as many members as possible throughout this year.

Community Ties

After my father served with the U.S. Navy in Vietnam, he was stationed in Port Hueneme and settled in Oxnard with my mother. I grew up in Oxnard with my three siblings in the 70s and 80s before seat belt laws and while kids played outside until the streetlights came on. As a result, I have my fair share of bumps and bruises. However, I learned from my parents a sense of giving back by watching them serve the community. My mother volunteered in my school, at church, and worked as a para-educator teaching English as a second language.

Having been given this example of service by my parents, I began to serve others and have been doing so for the past twenty years. I had the pleasure of volunteering with the Oversight Committee for the Ventura County Community College District related to a building bond. I joined the Alumni and Friends Board at my alma mater, California State University at Channel Islands. I am member of the noon time Rotary Club and served as past

President and as a Paul Harris Fellow. It was there I learned the phrase, “service above self,” and fellowship. Through Rotary, I was introduced to Mock Trial and became a scorer for the High School Mock Trial Competition. I was appointed by Governor Jerry Brown to dissolve the former Redevelopment Agency for the City of Santa Paula. My children played youth soccer, so I found myself volunteering as a referee and then a referee administrator for North Oxnard AYSO. I was asked by **Mark Kirwin**, when **Erik Feingold** was President, to join the VCBA. I volunteered for the free legal aid clinic at the law library and now at the Colleges of Law. I just have not learned to say “no” to volunteering. I hope that I never do and that I have set forth a good example of service for my children.

Given AB 2505 reporting requirements, attorneys will need to report their pro bono service hours next year. I would invite the membership to serve the community by volunteering through the VCBA’s Attorneys Sharing Knowledge (“A.S.K.”) program where attorney volunteers speak




to groups regarding the law. I would encourage members to volunteer at the legal aid clinic and Swap Meet Justice. High School Mock Trial is also looking for volunteers for February and March through the Ventura County Office of Education. I look forward to seeing as many of you as possible at these volunteer opportunities and events and learning about other volunteer opportunities that you can perform for your community.

Have a great 2025!




Guillermo “Bert” Partida practices law at *Slaughter, Reagan & Cole, LLP* in the areas of *Personal Injury Defense, Premises Liability, and Habitability Defense.*



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HAVE YOU HEARD?

VENTURA SUPERIOR COURT LAUNCHES CARE ACT PROGRAM

The Ventura Superior Court has launched the Community Assistance, Recovery, and Empowerment (CARE) Act Program. Established by Senate Bill 1338, the CARE Act empowers a broad range of persons – family members, behavioral health professionals, licensed clinicians, first responders, public guardians, conservators, and others with close ties to an individual - to petition the court on behalf of a person experiencing debilitating mental health conditions, such as schizophrenia spectrum and psychotic disorders. The CARE Act creates a pathway to connect eligible individuals (called “respondents”) to treatment and services, focusing on long-term recovery through a structured court process.

CARE Act proceedings consist of mental health assessments and court hearings to determine whether a respondent meets the program’s eligibility requirements. Ventura County Behavioral Health evaluates eligibility, coordinates treatment and supportive services, and ensures program standards are met. The Ventura County Public Defender provides legal representation for respondents who cannot afford their own attorney. If a respondent qualifies, a CARE agreement or plan may be developed and ordered by the court.

Beginning December 1, 2024, CARE Act Petitions will be accepted at the Ventura Hall of Justice and the Oxnard Juvenile Courthouse. Filing a petition is free of charge. CARE Act proceedings will take place each week on Wednesdays at 1:30 p.m. in Courtroom 22 at the Ventura Hall of Justice, located at 800 South Victoria Avenue, Ventura, CA 93009. The CARE Act Program also offers remote appearance options for participants unable to attend in person. CARE proceedings are confidential and not open to the public.

Ventura Superior Court’s Self-Help Legal Access Center can assist CARE Act petitioners, respondents, and families through the program. They can receive step-by-step assistance with filing petitions, preparing for hearings, and connecting with additional community resources.

For more information on CARE Act proceedings, links to forms, and other resources, please visit Ventura Superior Court’s CARE Act website at <https://www.ventura.courts.ca.gov/care.html>.

CHANGES IN LEADERSHIP:

The following organizations and VCBA bar sections will have new leadership in 2025:



Katie Clunen will lead Women Lawyers of Ventura County. Clunen specializes in family law and mediation in Southern California.

Santo Riccobono will lead Ventura County Trial Lawyers Association. Riccobono has experience navigating wrongful death claims, traumatic brain injury cases, products liability suits, mass torts, and medical malpractice litigation.



Michael Rutkowski will lead VCBA’s Family Law section. Rutkowski is a Certified Family Law Specialist and focuses exclusively on all areas of family law and is certified to represent minors as “Minors Counsel” when court appointed.



Alex Tron will lead VCBA’s Barrister’s section. He is The Social Impact Center’s staff attorney specializing in reentry.



VCBA is currently seeking bar leaders for the East County Bar, Intellectual Property, and Natural Resources sections.

NEW FACE AT VENTURA COUNTY LEGAL AID

Ventura County Legal Aid is delighted to welcome Eliana (Ellie) Gomez to its staff. Ellie will be working at the Ventura Family Justice Center helping crime victims and assisting the community at large at the walk-in clinic. She is a law student at The Colleges of Law and is on track to graduate in the fall of 2026.

PANDA KROLL JOINS NEW YORK FIRM, OPENS DTLA OFFICE

New York City-based law firm Bradford Edwards LLP, specializing in high-stakes commercial litigation, government and corporate investigations, antitrust, and corporate restructuring, proudly announced the opening of its new office in heart of downtown Los Angeles, California. The expansion marks a significant milestone in the firm’s growth strategy and its commitment to serving clients on the West Coast.



Panda Kroll will join Bradford Edwards and anchor the firm’s Los Angeles office. Kroll has deep roots in California’s legal community and extensive experience litigating claims involving contracts, real estate, false advertising (including Lanham Act) and defamation in state and federal courts. Kroll has been co-counsel with Bradford Edwards on several federal court cases over the past few years, including in California. Kroll earned her J.D. from Boston University School of Law, an MFA from Northern Illinois University with an emphasis on Media Studies, and a B.A. in Literature from U.C. Santa Cruz.

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BARRISTER'S CORNER – CALIFORNIA STATE BAR CHANGES FOR ATTORNEYS

By Genese Kouakoua

The California State Bar has implemented changes affecting all attorneys. Please be aware of the following:

New annual license renewal dates

The annual license renewal period now begins on February 1st and ends on March 30th. For 2025, the annual license renewal will instead run from February 1, 2025, to April 1, 2025. The deadline has been extended due to the weekend and the March 31st holiday.

To qualify for the 2025 inactive rate fee, the Application for Transfer to Inactive must have been submitted by December 1, 2024, and the effective date of the transfer must be on or before December 31, 2024.

New MCLE requirements

Beginning with the compliance period ending January 31, 2025, licensees are required to complete and report compliance on the following new subfields:

- Technology in the Practice of Law credit (one hour required)
- Civility in the Legal Profession credit (one hour required)
- An additional unit of Competence credit (two hours required)

New extended MCLE compliance periods

The next MCLE compliance periods have been extended to a 38-month cycle for each compliance group, with a reporting deadline of March 30. After the 38-month cycle, compliance periods will return to the standard 36-month cycle.

The state bar has also divided attorneys into three compliance groups based on last names (A-G, H-M, and N-Z) with unique deadlines depending on the group. For example, attorneys in MCLE compliance group 1 (last names A-G) must earn sufficient MCLE credit between February 1, 2022, through March 29, 2025, and report compliance by April 1, 2025.

Failure to comply may result in late fees.

Genese Kouakoua is a member of the VCBA Barristers. The Barristers is a section of the Ventura County Bar Association. Membership is automatic and free if you are a VCBA member. If you are under 36 or have been practicing law for seven years or less, you are a Barrister!



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JUDGE GILBERT ROMERO CALLS FOR MOCK TRIAL VOLUNTEERS FOR 2025

Dear Prospective Mock Trial Volunteer,

On behalf of the 800+ students who participate in the Ventura County Mock Trial program, I invite you to share your legal expertise with this worthwhile program as an attorney scorer and/or judge. Mock Trial captures the imagination and engages the students of our community like no other activity. The students have been studying and practicing for hours each week since early September. In large part, these students participate in Mock Trial because the local bar has validated the program by years of support from attorneys like you.

The case this year is *People V. Gold*, a kidnapping trial. The information booklet for the case sets forth all the facts and relevant legal authorities. Participants are limited to these facts, authorities, and the list of permissible objections, both in the pre-trial motion and at trial. Nothing else may be cited or argued. The booklet will be available for your review prior to the competition.

The Ventura County Mock Trial competition includes both a high school

and a middle school competition! Middle school students utilize the same fact pattern and rules and procedures as the high school competition, but there is no pretrial motion. We need volunteers to score and judge both competitions.

The event will take place **in the daytime over the course of two weekends**. Breakfast and lunch will be provided to volunteers. The middle school competition will take place concurrently during the final rounds of the high school competition with an additional Championship Round to follow:

High School Competition: **February 22-23, & March 1-2** (9AM – 4PM | Ventura Courthouse)

Middle School Competition: **March 1-2** (9 AM – 4 PM | Ventura Courthouse)

Middle School Championships: **March 7** (2 PM – 5PM | Ventura County Office of Education)

We are seeking approximately 60 volunteers per day to serve as scorers. Additional

volunteers will serve as back-up scorers in the event of a scorer absence. If the required quantity of volunteers is present for this event, back-up scorers will not be needed and may choose to observe the event or go home. I ask that all volunteers commit to one full day of participation in the competition. Please let us know if you are available for more than one day or have any flexibility on the day(s) you can contribute. Anyone interested in serving as a presiding judge during the competition can contact my secretary, Art Alvara, at 805.289.8853.

Prior to the competition there will be a scorers' orientation to review rules and scoring. The orientation will be held on **Thursday, February 13, from 12:00 PM to 1:30 PM** via Zoom. *1 hour of MCLE credit is available for the meeting.*

Please register online at: www.vcoe.org/Competitions/Mock-Trial/Volunteers. Thank you for supporting the Mock Trial program.

Gilbert A. Romero, Judge of the Superior Court



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FROM BOY SCOUT, TO SOLDIER, TO JUDGE: THE EXTRAORDINARY JOURNEY OF DUSTY KAWAI

By Monique Magar

To many, **Judge Dusty Kawai** is a mystery—soft spoken, well-tempered, bearing a striking resemblance to Benicio Del Toro. Really, Google it. What is perhaps more known about the newly appointed judicial officer is that he grew up in Ventura County, went to Rio Mesa High School in Oxnard, and is directly serving the community he was raised in. But Kawai has lived a well-rounded, full life that informs every aspect of his wise perspective, making him perfectly fit for his new position.

We do not see the world as it is, but as we are – Anaïs Nin. Kawai is someone who has endured struggle, heartache, seen war, death, the invasion and occupation of countries. His life events are exceptional, placing him in moments where he was faced with pain, challenge, and the option of turning dark. But instead of being overtaken by trauma, Kawai intentionally evolves, utilizing every moment in his committed journey towards constant betterment.

Kawai's great-grandparent's emigrated to the United States from Japan. His grandparents, though United States citizens, were relocated from their home in California to Utah during World War II because of their Japanese heritage. His father lost two siblings at the internment camps. After the war, his family was permitted to return to California. His father was 22 and his mother just 18 when they got married. The young couple struggled to maintain basic necessities like a clean home, steady income, or health care for their three sons. The youngest and accident prone, Kawai remembers worrying about the disadvantage, shouldering adult burdens. So, amidst the anxiety, he made a promise to himself: he would do better. He would provide more for his future family. He just had to figure out how to get there.

Throughout adolescence, Kawai's positive influences guided him, revealing his potential at an impressionable time. These pillars illustrated examples of what success, hard work, and stability looked like. His Scout Master, Jim Maddox, had faith in him and gave Kawai leadership positions, highlighting his skills and talents. On the path towards achieving his goal of betterment, Maddox showed him fiscal responsibility. Kawai was distinctly taught



that he could do anything if he just got an education. The shame of his childhood insecurity transformed into the motivation that shaped his adulthood. Methodically, he achieved success after success. Kawai was the first in his family to graduate from college. He was the first in his family to become a professional. He was the first in his family to be a Military Officer.



But how would he afford college and, later, law school? The military. Kawai joined the military in 1994 to get the GI bill, which served as scholarship money to pay for his higher education. From 1994 to 2001, Kawai was enlisted as a reservist soldier, trained in military intelligence as an interrogator. And his service was a tall order. In the 1990s, when NATO was expanding, Kawai was just one of three Bulgarian translators. With such a demanding skill at such an opportune time, he became the liaison for the Bulgarian government. He accomplished this while remaining a full-time student. During college, Kawai was placed on active-duty military orders and was leant to the Drug Enforcement Agency. At the DEA, he translated wire taps of Bulgarian organized crime operations—a job he kept into law school.



Devoted soldier aside, Kawai is a loving father. Upon graduating from law school in 2001, he decided to leave the army. This decision was usurped by the events on September 11, 2001; the United States military placed a freeze on any soldier wishing to leave the service. He, again, was needed and had a call to tend. Due to the state of war, Kawai could not turn his back on rendering aid. It was during this

time that Kawai advanced from an enlisted soldier to a military officer.

Still, he was also an attorney with a professional calling. In 2001, he worked at a small firm that did contract public defense in the misdemeanor unit. This would be the beginning of an impactful 20-year career in criminal defense advocacy.

Two years later, in 2003, Kawai got called to Iraq on just three days' notice, with two kids and one on the way. While serving in Iraq, Kawai again bore the weight of an incredibly important task. He interrogated Saddam Hussein's cabinet members. They called him the "Fruit Boy." His interrogation tactic was unique—he would load up his



cargo pants pockets with fruit. He then questioned with casual conversation while eating produce, sharing bananas and oranges to disarm the interrogated. A clever tactic, he was effective. No matter who a person was or what they had done, Kawai always met them with respect. And that respect, he learned, went a long way.

With his legal career on pause, Kawai did a second term in Afghanistan, from September 2006 to June 2007, exposed to the worst of humanity. Instead of allowing the distress to foster fear or resentment, this service further nurtured his empathy and understanding of humankind. In 2007, he returned from Afghanistan. He returned better, with broader compassion and understanding of those in their ugliest times, fully equipped to honor and dignify the accused. During his military career, Kawai served as a Regional Defense Counsel, supervising the criminal defense efforts of 14 military officers, charged with defending soldiers in court-martial proceedings. In 2023, Judge Kawai was appointed to the *military* bench

and has been serving as a Judge in the 6th Military Circuit.

But before he left for Afghanistan, Tom Means, the Public Defender in Provo, Utah, (himself a Vietnam Veteran) told him he had a job at the Public Defender's Office waiting for him upon his return. In true fashion, Kawai did not stop. When he returned from Afghanistan, Kawai did not take the easy route or shy away from selflessness. He did not contemplate an easier career path. He kept on giving in the face of challenging work, recognizing its value and what he had to offer. He continued his advocacy, now representing those accused of the heaviest felony crimes. He stayed at the Public Defender's Office in Provo for 4 years and handled 4 death penalty cases.

In 2009, Kawai rekindled with a beautiful blonde from his past, Heather. The two went to high school together and reconnected 18 years after they graduated from Rio Mesa. They fell in love long distance—from Utah to California. With this new chapter, Kawai knew his life would forever change. Now, he had a blended family. No stranger to stress and the juggling of responsibilities, Kawai started studying for the dreaded California Bar exam. Upon finally passing the California Bar in February of 2014, Judge Kawai left Utah, a place that was home for 20 years. He was about to embark on a journey of more challenge and success. This time, he would be serving his original home: right here.

From 2014 to 2021, Kawai advocated for the indigent of Ventura County, giving of himself to our community in and out of court. In the courtroom, Kawai was a force. Knowledgeable, persuasive and charming. As a Senior Deputy Public Defender, Kawai mentored attorneys, managed to make everyone he contacted feel special, and tried the most serious of felonies back-to-back—without breaks and without excuse.

Senior Deputy District Attorney **John Barrick** recalls:

“Judge Kawai was one of the best trial attorneys I have worked against. While that fact might cause some prosecutors stress, I absolutely enjoyed our courtroom



time together because he was so likeable. My favorite moment with Dusty was during a murder trial where Dusty, who is a Colonel in the Army Reserve, would refer to his exhibits by the military alphabet. For example, “Defense Exhibit Alpha, Defense Exhibit Bravo, Defense Exhibit Charlie.” I believed Dusty was trying to subconsciously communicate to the jury that he was active military, so I started to also refer to his exhibits the same way. Dusty, of course, immediately knew what I was doing, and going forward, whenever one of us would refer to the defense exhibits, we would give each other a knowing look. I don't know if the jury thought Dusty and I were going at each other, but outside their presence, we laughed so hard at our ridiculous exchanges that we almost cried. That trial with Dusty is one of my favorite career memories. We still laugh about it today.”

In his 20 years as a criminal defense attorney, Kawai tried 107 criminal cases to jury verdict. You read that right. And that number is remarkable. He represented 17 men charged with murder, seven of whom were facing the death penalty. Yes, he was certified in both Utah and California to handle death penalty matters. It simply does not get more serious than that. Beyond the courtroom and military, Kawai continued to find ways to give back. He used his skills and talents wherever there was space to help. Staff Services Specialist Zeke Berkley from the Public Defender's Office shares:

“Dusty has always been a generous person, particularly with his time. In fact, it seems Dusty has made it a point to say “yes” as often as possible, especially when he knows it is helping the community. I found it quite admirable that during one of his busiest trial periods, he found time to learn, rehearse and ultimately perform songs for Ventura County Standdown. Standdown is an event that provides assistance (as well as a little entertainment) for displaced and struggling veterans. Dusty, a veteran himself, had a smile on his face throughout the entire performance, and that inspired smiles from all the vets in the audience as



well. I was proud to share the stage with him that day.”

Beneath all the accolades and achievements, Kawai is grounded. Unassuming, kind and compassionate, Kawai embodies the perfect disposition for the bench. Really, it's the perfect disposition for most things. Senior Deputy Public Defender **Damon Jenkins** has known Kawai for a decade. In the same hiring class, the two have shared many lunches and memories. He comments: “In all my time with Dusty, I have never seen him mistreat anyone. They say that babies are the best judge of character. And Dusty is the ‘Baby Whisperer.’ He has an uncanny ability to make babies stop crying. No matter where we were, a friend's baby was always welcome in his arms, and he always managed to calm away their discomfort. Whereas most people would be bothered by my colicky, crying newborn faithfully disturbing dinner at a conference, Dusty enjoyed being a sense of relief. Rocking him patiently while the rest of the restaurant was mortified by the shrieks. He never backed down from difficulty and always found where he could be of use. Without a doubt, he tried the hardest cases with grace and nobility.”

Clumsy little brother, Boy Scout, devoted father, soldier, Fruit Boy, Baby Whisperer, Senior Trial Attorney, Regional Defense Counsel, loving husband, Colonel Kawai, Your Honor. At every stage of his life, in all his roles, Kawai remained steadfast at being the best he could be with what he had. With these roles accumulating and enhancing the next, Kawai leans on lessons learned along the way. Lessons become applied, perspective grows, and merits are achieved. In the military, this year, Kawai was promoted from Lieutenant Colonel to Full Colonel.

Continued on page 10

FROM BOY SCOUT, TO SOLDIER,
TO JUDGE: THE EXTRAORDINARY
JOURNEY OF DUSTY KAWAI

Continued from page 9




And in the courthouse, he now wears a black robe, sitting elevated in a courtroom with his name outside of the door. Without any deliberation, every moment in his life has led him to that place; life has molded him to be “Judge Kawai.” And just like his callings before, he does not take the calling of judgeship lightly. He regards the courthouse as a temple of justice and treats attorneys the

way he would want to be treated. He seeks to be the judge that you would want your best friend to encounter. He recognizes his judicial impact and honors the sanctity of unbiased objectivity, for everyone who comes into his courtroom.

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Monique Magar is a Senior Deputy Public Defender at the Ventura County Public Defender’s Office.



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VENTURA SUPERIOR COURT CEO BRENDA MCCORMICK RETIRES

By *Christal Joy Porter*

After 19 years of service to the Superior Court of California, County of Ventura (Ventura Superior Court), **Brenda McCormick** has made the hard decision to say farewell to the court and start a new chapter of her life - retirement. McCormick has spent the last three and a half years as the Court Executive Officer, Clerk of the Court, and Jury Commissioner. Before her current role as Court Executive Officer etc., McCormick served as General Counsel and Managing Attorney for the Ventura Superior Court, and panel counsel for the California Judicial Council. [More about McCormick's legal journey and background can be found in Citations' January 2022 issue] After more than 36 years as a practitioner, "grateful" is one word McCormick uses to describe her legal career journey. McCormick reflects on the positions she has held and the people she's had the opportunity to work alongside with overflowing gratitude.

Highlights of McCormick's Time with the Ventura Superior Court

McCormick is proud of the Ventura Superior Court's transition to a new e-court case management system and e-filing system for Civil and Probate cases (development and implementation will start next year for Family Law.) This may not seem like big news to some, but before the new e-filing system, the Courts operated on an e-delivery system, which essentially acted as an email for the clerks and still required the clerks to spend time printing submitted documents to process and file them. With the new e-filing system most of the data input the clerks had to do with initial filings will now be performed by the party filing the document(s), and through system automation. With the continued shortage of court employees, this new e-filing system may prove to help utilize current staff resources more efficiently. McCormick praises her time working with public employees of the Court as not typical "public employees" or "good enough for government," but found the employees she has worked with throughout the years to go above and beyond what is required. McCormick has appreciated and been inspired by the hard-working and dedicated employees she has worked with. She considers it an honor and pleasure to have gotten to know and assist the Court's employees as they pursue service to the public in the best way possible.

Reflections on Time in the Private Sector and Current Position

McCormick worked as a litigator in the private sector with long-time Ventura firm, Benton, Orr, Duval & Buckingham for 17 years before joining the Court. During her time as a litigator, McCormick enjoyed engaging in the art of advocacy for her clients and working with the people at the firm. After leaving the private sector, McCormick did not miss the billable hours and the necessity to generate business (rainmaking).

In her current roles, McCormick equates the work to running a business. Under the direction of the Presiding Judge, it requires budget management, overseeing systems and processes of court operations and nonjudicial employees, addressing customers' concerns and issues ("customers" for the courts is the public, i.e. attorneys and self-represented parties) and jury management. McCormick believes the Court Executive Officer role is great for a person skilled as an attorney or with a financial background, who has human resources experience and a focus on public administration.

McCormick and her team worked tirelessly during the COVID-19 court shutdown attempting to create ways for the public to stay safe while participating in the justice system. One necessary change from that time was half-day jury summons reporting. The half-day jury summons has proved to be a successful change from the previous full-day reporting that had been used for decades. The half-day jury summons will likely be in place for the foreseeable future. McCormick is proud of the successful jury summons change and believes it lessened the burden on the community when participating in our valued justice system. McCormick's time serving Ventura Superior Court allowed her to experience its deep inner workings. McCormick believes an important part of the culture of the Ventura Superior Court is service, specifically going the extra mile to help the customers of the courts.

What's Next?

McCormick is excited to have time to pursue golf, travel, spend time with friends and family, garden, and organize things she hasn't had the time to organize. McCormick and her husband have two twin boys, one who is in graduate school for physical therapy and the other who will be graduating from

college next week. Both plan to enter the medical field and have foregone following in their parents' footsteps. (Brenda McCormick is married to Oxnard attorney **Kevin McCormick**)

Advice to New/Young Attorneys

- Be active in the local bar association and the different sections of the bar. Build relationships with your fellow attorney peers and mentors.
- Remember who you are in the middle of litigation (conflict). Don't let litigation turn you into a bully. While you may do the very best job for your client, it is your client's case, not yours.
- You may feel pressure to feel like you know everything, but it is ok if you don't.

Fun/Interesting Facts

- If McCormick were in an alternate universe where she could have a completely different career, she would choose to be a sideline sports reporter for NFL or College football. McCormick is an avid football fan.
- Her top college team is Nebraska (her home state) and her top two NFL teams are the Denver Broncos and Los Angeles Chargers.
- McCormick's favorite quarterbacks of all time are Tommie Fraizer (Nebraska) and Dan Pastorini (Houston Oilers).
- McCormick plays the piano, organ, and flute. She would like to learn the guitar or violin.

McCormick's decision to move to Ventura to practice law, instead of staying in Nebraska, was likely the most rewarding decision she has made in her life. Her time and legal practice in Ventura have afforded her an engaging, challenging, and fulfilling career journey, her husband, a wonderful family with her twin boys, great friendships, and inspiring mentors and co-workers. If she had to do it all over again, she wouldn't change a thing!



Christal Joy Porter is an attorney with Rodnunsky & Associates, practicing in the areas of trust and estate litigation and estate planning. She can be reached at the office at (818) 737-1090.



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NAVIGATING NONPROBATE ASSETS - THE IMPACT OF *Reich v. Reich* ON OMITTED SPOUSE CLAIMS

By David B. Shea, Esq.

Marriage often brings joy, but when it happens later in life—or follows a prior union—it can leave surprising gaps in estate planning. That’s exactly what happened in *Reich v. Reich* (2024) ___ Cal.App5th ___ (Oct. 24, 2024, B332980), where Thomas Reich married Pamela years after creating a trust and naming beneficiaries of his IRA, yet never updated his estate plan to reflect their marriage. In such cases, California’s omitted spouse doctrine typically serves as a safety net, ensuring that a surviving spouse, inadvertently left out of outdated documents, still receives a share of the estate. The doctrine assumes these omissions are unintentional unless the decedent provided for the spouse in other ways, such as naming them as a beneficiary of a life insurance policy. But IRAs, with their fixed beneficiary designations, pose a unique legal challenge. In *Reich*, the court tackled the key question: should IRA proceeds be included in the surviving spouse’s share? The court’s answer—a definitive no—drew a firm line, confirming that nonprobate assets like IRAs lie beyond the reach of the omitted spouse doctrine. This ruling not only highlights the power of beneficiary designations, but also underscores the limits of statutory protections for surviving spouses. For estate planners, it reinforces the necessity of updating estate plans and beneficiary designations. For litigators, it clarifies the boundaries of omitted spouse claims.

When Thomas passed away in 2021, he left behind a trust naming his daughter and granddaughter as beneficiaries and an IRA worth \$1.5 million. Thomas had completed a beneficiary designation form specifying that Shannon’s and Leah’s separate trusts would each receive half of the IRA’s proceeds upon his death. Pamela, who married Thomas in 2020, argued that the IRA proceeds should be included in her statutory share as an omitted spouse because the separate trusts were created under Thomas’s revocable trust. California’s omitted spouse doctrine typically provides a share of the estate to a spouse unintentionally excluded from a decedent’s will or trust, as articulated in Probate Code sections 21600–21612. However, the doctrine applies only to probate assets

or property passing through a revocable trust that becomes irrevocable upon the decedent’s death.

The court rejected Pamela’s argument, holding that IRA proceeds are nonprobate assets governed by their beneficiary designations. These proceeds do not pass through a decedent’s will or trust unless explicitly directed otherwise. This principle is firmly rooted in California law, including Probate Code section 5000, subdivision (a), which identifies IRAs as nonprobate transfers. The court relied on *Estate of Davis* (1985) 171 Cal.App.3d 854, 858, which held that IRA proceeds “do not become a part of the [probate] estate” when transferred directly to designated beneficiaries, and *Estate of Petersen* (1994) 28 Cal.App.4th 1742, 1751, which reaffirmed that such transfers bypass probate.

Pamela advanced multiple arguments in her attempt to include the IRA proceeds in her statutory share. She claimed that the IRA passed through the revocable trust because the beneficiaries were sub-trusts created under it. The court rejected this theory, clarifying that the separate trusts functioned independently and received the IRA proceeds directly under the beneficiary designations. Pamela further contended that absent the trust, the IRA proceeds would have reverted to the estate. The court dismissed this hypothetical, emphasizing Thomas’s clear intent as evidenced by the account’s beneficiary designations.

In addition to these substantive issues, Pamela raised procedural challenges, arguing that an earlier ruling on demurrer, which had allowed her claim to proceed, precluded dismissal of her petitions. The appellate court rejected this argument, noting that preliminary rulings on demurrers do not bind subsequent substantive decisions. The court relied on *Summers v. City of Cathedral City* (1990) 225 Cal.App.3d 1047, 1063, and *Wrightson v. Dougherty* (1936) 5 Cal.2d 257, 265, which affirm that such rulings are procedural and do not determine the merits of a case.

The decision in *Reich* underscores critical lessons for estate planners and litigators

alike. For estate planners, it highlights the importance of ensuring beneficiary designations align with a client’s intentions, particularly after significant life events like marriage. Nonprobate assets, such as IRAs, operate outside the probate process, governed by contractual terms that must be consistent with the broader estate plan to prevent unintended exclusions.

For litigators, the case clarifies the boundaries of omitted spouse claims by reinforcing the distinction between probate and nonprobate assets. Courts give precedence to explicit beneficiary designations and the decedent’s clear intent, emphasizing the need for clarity and consistency in governing instruments to avoid disputes.

Ultimately, *Reich* serves as both a cautionary tale and a roadmap. It demonstrates the risks of procrastination in estate planning and affirms the power of beneficiary designations to dictate asset distribution. For both planners and litigators, the case underscores the value of meticulous preparation and proactive strategies to ensure that all parties—surviving spouses and designated beneficiaries alike—are treated in accordance with the decedent’s wishes.



David B. Shea, a Partner at Ferguson Case Orr Paterson LLP, is a certified specialist in Estate Planning, Trust, and Probate Law. Utilizing his extensive litigation experience, he also serves as a mediator, concentrating on resolving trust and estate disputes.



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