

MAY 2024 APPELLATE UPDATE

Professional conduct

“Excellent lawyers are civil.” In this discovery dispute, the Court of Appeal upheld \$10,000 in sanctions against The Vanderpool Law Firm for failure to cooperate in discovery, finding that the law firm was “woefully uncivil.” The court stated: “Incivility is the adult equivalent of schoolyard bullying and we will not keep looking the other way when attorneys practice like this. They will be called out and immortalized in the California Appellate Reports.”

Masimo Corp. v. The Vanderpool Law Firm

May 2, 2024

Fourth District, case no. G061829

Lassen County Superior Court Judge Removed from Bench

The California Commission on Judicial Performance took the unusual step of removing Lassen County Superior Court Judge Tony Mallery from the bench for misconduct. The Commission found Judge Mallery interfered with the Commission’s investigation of his misconduct and discouraged witnesses from testifying. He also made intentional misrepresentations and fabricated testimony to the Commission.

Inquiry Concerning Judge Tony R. Mallery

May 2, 2024

Commission on Judicial Performance, case no. 208

Arbitration

Failure to timely pay the arbitrator’s fees relieves the parties of their contractual obligation to arbitrate their dispute, pursuant to Code of Civil Procedure section 1281.98, enacted in 2019. In this case, the party seeking to compel arbitration failed to timely pay the arbitrator’s fees as repeatedly demanded by the arbitrator. Opposing party filed a motion to withdraw from the arbitration with the Superior Court. The Superior Court denied the motion and opposing party sought writ relief from the Court of Appeal. The appellate court held that because the party seeking to compel arbitration had failed to timely pay the arbitrator’s fees, the motion to withdraw from arbitration should have been granted.

Reynosa v. Superior Court

May 6, 2024

Fifth District, case no. F086342

Family Law

A domestic violence restraining order (DVRO) may be renewed based upon the same facts as the original order. Renewal of a DVRO does not require evidence of the existence or non-existence of new facts.

G.G. v. G.S.

May 28, 2024

Second Appellate District, case no. B331994

Family Law

Where one spouse has exclusive management and control over a third party who directly controls investment of community funds post-separation, the burden of proof shifts to that spouse to account for the funds. This case holds that the burden-shifting framework applies also to *separate property*.

Marriage of Dadashian

May 28, 2024

First Appellate District, case no. A163185

Solano County Superior Court Judge Admonished

Solano County Superior Court judge Daniel J. Healey was disciplined on May 23, 2024 by the Commission on Judicial Performance for poor treatment of attorneys defending criminal defendants in his courtroom. Judge Healey has served on the Solano County Superior Court since 2011.

In the Matter of Judge Daniel J. Healey

May 23, 2024

Commission on Judicial Performance