

October 5, 2004

“TOP 3” FOR OCTOBER 2004

(“Click” on case name for details)

- ① **Records revealed:** The statutory protection for police personnel files does not bar the press from obtaining an officer’s disciplinary appeal records.

Copley Press Inc. v. Superior Court (County of San Diego) (California District Court of Appeal, September 16, 2004).

- ② **Haunting past:** A public employee’s allegations of sexual harassment that are barred by the statute of limitations can nonetheless serve as the basis for a current retaliation claim.

Porter v. California Dept. of Corrections (Ninth Circuit Court of Appeals, September 10, 2004).

- ③ **New start:** A newly-incorporated city has discretion to reject a final subdivision map -- even if, pre-incorporation, the county approved the project’s tentative vesting map.

City of Goleta v. Superior Court (Oly Chadmar Sandpiper General Partnership) (California District Court of Appeal, September 30, 2004).

THIS MONTH'S CASES BY TOPIC

("Click" on case name for details)

ACTS OR OMISSIONS OF PUBLIC EMPLOYEES

- **Because mediation tolled the deadline for trial, court erred in dismissing case under the five-year statute.**

Gonzalez v. County of Los Angeles (2nd Dist., Div. 1, September 30, 2004) __Cal.App.4th__, 2004 Daily Journal DAR __, 2004 WL _____.

- **Disqualification of entire city attorney's office was not required when attorney for homeowners in action against city accepted a job at city attorney's office.**

City of Santa Barbara v. Superior Court (Stenson) (2nd Dist., Div. 6, September 7, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11240, 2004 WL 1977582.

IMMUNITIES

- **Investigator and prosecutor who allegedly pressured witness to lie in a murder trial are not entitled to absolute immunity.**

Genzler v. Longanbach (9th Cir. September 27, 2004) __F.3d__, 2004 Daily Journal DAR 12027, 2004 WL 2169395.

- **Prosecutors are entitled to absolute immunity from liability for overbroad search warrants.**

KRL v. Moore (9th Cir. September 27, 2004) __F.3d__, 2004 Daily Journal DAR 12021, 2004 WL 2169414.

- **Appellant need not assert a serious and unsettled question of law for the court to hear an interlocutory appeal from a denial of Eleventh Amendment Immunity.**

Phiffer v. Columbia River Correctional Institute (9th Cir. September 21, 2004) __Cal.4th__, 2004 Daily Journal 11787, 2004 WL 20093450.

EMPLOYMENT - CIVIL RIGHTS

- **State agency has an affirmative duty to solicit information from an asthmatic employee before medically demoting her.**

California Dept. of Corrections v. State Personnel Board (Henning) (3rd Dist. September 3, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11043, 2004 WL 1950058.

EMPLOYMENT - DISCRIMINATION AND HARASSMENT

- **Time barred claims of sexual harassment may serve as the basis for an employee's current allegations of retaliation.**

Porter v. California Dept. of Corrections (9th Cir. September 10, 2004) __F.3d__, 2004 Daily Journal DAR 11308, 2004 WL 2029923.

EMPLOYMENT - SCHOOL LIABILITY

- **Probationary teacher disciplined for objecting to random weapons searches in her classroom is not entitled to reinstatement after employment contract expired.**

Motevalli v. Los Angeles Unified School District (2nd Dist., Div. 3, September 9, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11283, 2004 WL 2007047.

- **A teacher who is not eligible for permanent employment is not automatically rehired for another year if the school district does not send timely notice of reelection.**

Culbertson v. San Gabriel Unified School Dist. (2nd Dist., Div. 3, August 31, 2004) __Cal.App.4th __, 2004 Daily Journal DAR 10843, 2004 WL 1926036.

EMPLOYMENT - WHISTLEBLOWER LIABILITY

- **IRS employee's allegations that former IRS attorney improperly received favorable treatment for his clients are protected under Whistleblower Protection Act.**

Coons v. Secretary of the U.S. Dept. of the Treasury (9th Cir. September 1, 2004) __F.3d__, 2004 Daily Journal DAR 10901, 2004 WL 1936015.

POLICE - CIVIL RIGHT LIABILITY

- **Officers who conducted a warrantless search of a parolee who was in custody are not entitled to qualified immunity.**

Motley v. Parks (9th Cir. September 21, 2004) __F.3d__, 2004 Daily Journal DAR 11805, 2004 WL 2093442.

- **City's procedure for determining probable cause after a warrantless arrest did not violate plaintiff's civil rights.**

Jones v. City of Santa Monica (9th Cir. September 10, 2004) __F.3d__, 2004 Daily Journal DAR 11304, 2004 WL ____.

POLICE - RELEASE OF POLICE RECORDS

- **Press entitled to access to identity of police officer appealing disciplinary action and redacted records of appellate disciplinary proceeding.**

Copley Press Inc. v. Superior Court (County of San Diego) (4th Dist., Div. 1, September 16, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11687, 2004 WL 2066578.

CIVIL RIGHTS - DUE PROCESS AND EQUAL PROTECTION

- **Nonresident Workers Act that grants preferences to resident workers does not violate the Fourteenth Amendment.**

Sagana v. Tenorio (9th Cir. September 7, 2004) __F.3d__ 2004 Daily Journal DAR 11079, 2004 WL 1965048.

CIVIL RIGHTS - CALIFORNIA CONSTITUTION

- **Municipal utility district failed to demonstrate that its race-based discrimination, which favored minority-owned businesses, is necessary to maintain federal funding.**

C&C Construction Inc. v. Sacramento Municipal Utility District (3rd Dist. September 14, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11480, 2004 WL 2039130.

CIVIL RIGHTS - PRISONER'S RIGHTS

- **Prison inmate must exhaust administrative remedies before seeking judicial relief.**

Wright v. State of California (3rd Dist. September 21, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11868, 2004 WL 2095114

CIVIL RIGHTS - PREEMPTION

- **FERC's policy of allowing electricity prices to be set by market forces is not abdication of interstate rate setting authority.**

Public Utility District No. 1 of Snohomish County v. Dynegy Power Marketing Inc. (9th Cir. September 10, 2004) __F.3d__, 2004 Daily Journal DAR 11306, 2004 WL ____.

CIVIL RIGHTS - FIRST AMENDMENT - FREE SPEECH

- **County ordinance prohibiting “specific sexual activity” at adult entertainment businesses violates the First Amendment.**

Dream Palace v. County of Maricopa (9th Cir. September 27, 2004) __F.3d__, 2004 Daily Journal DAR 12034, 2004 WL 2169437.

- **Grand jury admonition preventing witnesses from discussing testimony is not a prior restraint in violation of First Amendment.**

San Jose Mercury News Inc. v. Criminal Grand Jury of Santa Clara County (6th Dist. September 15, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11574, 2004 WL 2050157.

CIVIL RIGHTS - TAXES

- **Parking-tax requirements that exempt certain groups do not violate equal protection clause.**

City and County of San Francisco v. Flying Dutchman Park Inc. (1st Dist., Div. 2, September 9, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11208, 2004 WL 2005917.

CIVIL RIGHTS - STANDING AND PROCEDURE

- **Although *Younger* abstention applies to federal actions for damages, those actions should be stayed while the state proceedings are pending, rather than dismissed.**

Gilbertson v. Albright (9th Cir. September 3, 2004) __F.3d__, 2004 Daily Journal DAR 10998, 2004 WL 1949425.

LAND USE - ZONING AND REGULATORY TAKINGS

- **Even after county approves vesting tentative map, newly-incorporated city can reject final subdivision map for a development project.**

City of Goleta v. Superior Court (Oly Chadmar Sandpiper General Partnership) (2nd Dist., Div. 6, September 30, 2004) __Cal.App.4th__, 2004 Daily Journal DAR__, 2004 WL _____.

- **County’s decision to merge contiguous parcels of land into one is upheld despite the fact that the county failed to provide notice.**

Moores v. Board of Supervisors of Mendocino County (1st Dist., Div. 4, September 24, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 12003, 2004 WL 2137284.

LAND USE - EMINENT DOMAIN

- **Property owner is entitled to monetary damages in eminent domain action because the city violated a preliminary injunction.**

Hurwitz v. City of Orange (4th Dist., Div. 3, September 24, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11969, 2004 WL 2129731.

REVIEW OF ADMINISTRATIVE DECISIONS

- **County must undertake Environmental Impact Report before demolishing historic but dilapidated jail.**

Architectural Heritage Assoc. v. County of Monterey (6th Dist. September 30, 2004) __Cal.App.4th__, 2004 Daily Journal DAR __, 2004 WL _____.

- **Administrative body denied doctor a fair hearing by disqualifying all of his experts, and trial court erred by failing to remand the case for rehearing.**

Sinaiko v. Superior Court (Medical Board of California) (3rd Dist. September 30, 2004) __Cal.App.4th__, 2004 Daily Journal DAR __, 2004 WL _____.

- **School district may deny a charter school's request for facilities when the request lacks documentation in support of student projections.**

Environmental Charter High School v. Centinela Valley High School (2nd Dist., Div. 2, September 10, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 11378, 2004 WL 1843391.

- **County's approval of development plan that would have a detrimental impact on seasonal wetlands did not violate California Environmental Quality Act.**

Sierra Club v. County of Napa (Beringer Wine Estates) (1st Dist., Div. 1, September 1, 2004) __Cal.App.4th__, 2004 Daily Journal DAR 10939, 2004 WL 1759301.

PUBLIC ENTITY VENUE

- **A party contracting with a county cannot voluntarily waive its statutory right to have venue over disputes transferred to a neutral county.**

Arntz Builders v. Superior Court (County of Contra Costa) (1st Dist., Div. 3, September 30, 2004) __Cal.App.4th__, 2004 Daily Journal DAR __, 2004 WL _____.

CASES PENDING BEFORE THE CALIFORNIA SUPREME COURT

- **The California Supreme Court will decide if a criminal defendant may request police personnel records by filing a declaration under seal.**

Garcia v. Superior Court (City of Santa Ana) (4th Dist., Div. 3, July 27, 2004) 2004 Daily Journal DAR 9147, review granted September 22, 2004 by 2004 Daily Journal DAR 11935.