

CALIFORNIA ACADEMY OF APPELLATE LAWYERS
S247089

Margaret M. Grignon
Grignon Law Firm LLP
6621 E. Pacific Coast Hwy., Ste. 200
Long Beach, CA 90803

First Vice President
Susan Brandt-Hawley

Brandt-Hawley Law Group
P.O. Box 1659
Glen Ellen, CA 95442

Second Vice President

John A. Taylor, Jr.
Horvitz & Levy LLP
3601 W. Olive Avenue
Burbank, CA 91505

Secretary-Treasurer

Kirk C. Jenkins
Horvitz & Levy LLP
3601 W. Olive Avenue
Burbank, CA 91505

Former Presidents

Gideon Kanner
Edward L. Lascher
Cyril Viadro
Ellis J. Horvitz
Robert A. Seligson
Paul P. Selvin
M. Reed Hunter
Michael M. Berger
Jerome I. Braun
Edward J. Horowitz
Raoul D. Kennedy
Arthur E. Schwimmer
Gerald Z. Marer
Wendy C. Lascher
Peter W. Davis
Robert E. Hinerfeld
Marc J. Poster
Gerald F. Uelmen
Irving H. Greines
Victoria J. De Goff
Dennis A. Fischer
Jerome B. Falk, Jr.
Kent L. Richland
Douglas R. Young
Barry R. Levy
Jay-Allen Eisen
Robert S. Gerstein
Ephraim Margolin
Richard A. Derevan
Elliot L. Bien
James C. Martin
Richard Sherman
Robin Meadow
Paul D. Fogel
Charles A. Bird
Charity Kenyon
Jonathan B. Steiner
Kevin M. Fong
David S. Ettinger
Jan T. Chilton
Robert A. Olson
Steven L. Mayer
Kathryn E. Karcher
Jon B. Eisenberg

February 20, 2018

Chief Justice Tani Cantil-Sakauye and Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: ***Central Valley Hospitalists v. Dignity Health***
No. A148742 (filed Jan. 9, 2017)
Request for Depublication (Cal. Rules of Court,
rule 8.1005(e)(2))

Dear Chief Justice Cantil-Sakauye and Associate Justices:

The California Academy of Appellate Lawyers requests
depublishing of the above-referenced opinion.

The members of the Academy are experienced appellate
practitioners whose common goals include promoting and
encouraging sound appellate procedures designed to ensure
proper and effective representation of appellate litigants, efficient
administration of justice at the appellate level, and
improvements in the law affecting appellate litigation.

The Academy believes this Court should depublish the
opinion because it belittles the role of appellate specialists in the
appellate process and thereby discourages their retention, to the
detriment of the efficient administration of justice at the
appellate level.

The Court of Appeal’s opinion criticizes appellant’s counsel
for the delay caused by “90 days of extension for the appellate
briefing.” (Opn. p. 20.) The court’s docket, however, indicates
that the parties *stipulated* to extensions of time for all three
briefs—60 days for appellant’s opening brief, 60 days for
respondent’s brief (plus a further 7-day extension on respondent’s
request), and 30 days for appellant’s reply brief—as authorized
by rule 8.212(b)(1) of the California Rules of Court.

The Academy believes that by faulting appellant’s counsel for obtaining a stipulated briefing extension, the opinion, if it remains published, would have an adverse impact on appellate practice by discouraging such stipulations. This would thwart the purposes of rule 8.212(b)(1)—to encourage efficiency and civility in appellate practice by authorizing stipulated extensions in lieu of applications to the court, and to ensure adequate time for appellate briefing in complex cases.

Noting that “three of the lawyers whose names appeared on the moving papers below are among the four lawyers listed on the briefs on appeal,” and asserting that “[n]ecessarily the analysis on appeal is the same analysis as in the trial court,” the Court of Appeal said “we do not understand how 90 days of extensions in an anti-SLAPP appeal can be a manifestation of anything but delay.” (Opn. p. 20.) The plain implication is that the fourth lawyer—the appellate specialist¹—could not have had anything significant to add on the appeal, but rather should simply have reused the trial court filings. This implication belittles the contributions of appellate specialists and discourages their retention.

Appellate specialists possess a degree of expertise and objectivity for which trial counsel’s experience of the case in superior court is no substitute. “[T]rial counsel obviously has become intimately familiar with the case; but, having ‘lived with’ the case for years, trial counsel’s ‘objectivity’ may be blurred.” (Eisenberg, *California Practice Guide: Civil Appeals and Writs* (2017) ¶ 1:96, p. 1-25.) Thus, trial attorneys are “well served by consulting and taking the advice of disinterested members of the bar, schooled in appellate practice.” (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1449-1450.)

In particular, “appellate practice entails rigorous original work in its own right.” (*In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 410.) “Appellate work is most assuredly not the recycling of trial level points and authorities.” (*Id.* at p. 408.) “The appellate practitioner who takes trial level points and authorities and, without reconsideration or additional research, merely shovels them in to an appellate brief, is producing a substandard product. Rather than being a rehash of trial level points and authorities, the

¹ While not evident from the Court of Appeal’s opinion, public records of the State Bar of California confirm that the fourth lawyer, Joanna S. McCallum, is a Certified Specialist in Appellate Law.

appellate brief offers counsel probably their best opportunity to craft work of original, professional, and, on occasion, literary value.” (*Id.* at p. 410, footnote omitted.)

If the Court of Appeal’s opinion remains published, its contrary implication would have a detrimental effect on the administration of justice at the appellate level.

The opinion also decries “the months of delay of oral argument based on claimed scheduling conflicts” of an “attorney who signed the appellate briefs” but “did not even participate below—he did not sign the papers, he did not argue the motion.” (Opn. p. 20.) The implication here is that an attorney who did not actively litigate the case below should not present oral argument on appeal. If that were true, however, then neither should an appellate specialist retained to handle an appeal present oral argument on the appeal. The Academy believes otherwise. Appellate specialists contribute as much value to oral argument as they do to briefing.

For the foregoing reasons, the Academy respectfully asks this Court to depublish the Court of Appeal’s opinion.²

² We also note that the Court of Appeal’s opinion misleadingly states that on August 11, 2017, the appellate court clerk sent appellant’s counsel a letter advising that the court was considering the imposition of sanctions on the court’s own motion, and that on August 14, 2017, appellant’s counsel filed a request for dismissal of the appeal. (Opn. p. 19.) One might infer from this recounting of events that the request for dismissal was prompted by counsel’s receipt of the sanctions letter. The court’s online docket, however, demonstrates otherwise, indicating that on August 11, 2017, appellant’s counsel informed the court clerk by telephone that appellant “intends on filing either a stipulation to dismiss or request for dismissal next week,” *after* which the court’s letter was posted to the docket. The Academy pointed this out to the Court of Appeal in a request for modification of the opinion (as did appellant in a petition for rehearing), but the court denied the Academy’s request.

Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
February 20, 2018
Page 4

Respectfully submitted,
**CALIFORNIA ACADEMY OF
APPELLATE LAWYERS**

By: /s/ Margaret Grignon
Margaret Grignon, President (No. 76621)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On February 20, 2018, I served true copies of the following document(s) described as **REQUEST FOR DEPUBLICATION** on the interested parties in this action as follows:

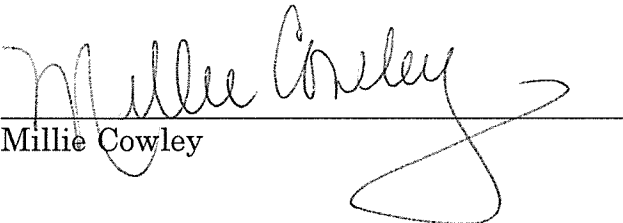
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 20, 2018, at Burbank, California.



Millie Cowley

SERVICE LIST

Central Valley Hospitalists v. Dignity Health
Court of Appeal Case No. A148742

Individual/Counsel Served	Party Represented
Clayeo C. Arnold 865 Howe Avenue, 3rd Floor Sacramento, CA 95825	Attorneys for Plaintiff and Respondent <i>Central Valley Hospitalists</i>
Barry S. Landsberg Craig S. Rutenberg Joanna S. McCallum Mannat Phelps & Phillips LLP 11355 W. Olympic Blvd. Los Angeles, CA 90064	Attorneys for Defendant and Appellant <i>Dignity Health</i>
Hon. Harold E. Kahn San Francisco Superior Court 400 McAllister Street, Dept. 302 San Francisco, CA 94102-4514	Case No. CGC-15-549691
California Court of Appeal First Appellate District, Division Two 350 McAllister Street San Francisco, CA 94102-7421	Case No. 148742 <i>Served through TrueFiling</i>